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Volume I

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The following persons were invited to give oral evidence but did not appear:—

PUNJAB.

1. Mr. F. B. Pool, Sub-Divisional Officer, Kulu.
2. Lala Lajpat Rai, M.L.A., Lahore.
3. Nawab Sir Zulfiqar Ali Khan, Kt., C.S.I., M.L.A., Lahore.
4. Mr. G. S. Bajpai, C.I.E., C.B.E., M.L.A., Simla.
5. Sardar Kartar Singh, M.L.A., Ferozepore City.
6. Khan Bahadur Mian Abdul Aziz, M.L.A., Deputy Commissioner, Hissar.
7. Sardar Gulab Singh, M.L.A., Lyallpur.
8. Captain Suraj Singh Bahadur, I.O.M., Amritsar.
9. The Hon'ble Raja Sir Harnam Singh, K.C.I.E., Jullundur City.
10. The Hon'ble Sardar Charanjit Singh, Jullundur City.
11. The Hon'ble Sir Shadi Lal, Chief Justice, Lahore.
12. Mrs. Lilian A. Underhill, Medical Missionary, Jhelum.
13. Mr. M. Gholam Sadiq, B.A., LL.B., Bar-at-Law, President, Municipal Committee, Amritsar.
14. Rai Bahadur Lala Brij Lal Puri, Advocate, President, Municipal Committee, Sargodha.
15. Shareefa Hamid Ali, President, Standing Committee All-India Women's Conference on Educational Reforms, Lahore.
16. Diwan Bahadur Raja Narendra Nath, M.A., M.L.C., Lahore.
17. Mian Zafar Ali Khan, Editor, "Zemindar", Lahore.
18. Rai Sahib Chaudhri Chhotu Ram, B.A., LL.B., M.L.C., Rohtak.
19. Rai Bahadur Lala Badri Dass, Advocate, Lahore.
20. Miss Khadyah Begum Ferozuddin, B.A. (Hons.), M.A., etc., P.E.S., Professor of History and Oriental Languages, Government College for Women, Lahore.
21. The Hon'ble Mr. Justice Tek Chand, Lahore.
22. Mrs. Shah Nawaz, C/o Mian Mohammad Shah Nawaz, M.L.A., Lahore.
23. Rai Bahadur Lala Hari Chand, Multan.
24. Dr. K. M. Bose, Lady Doctor, Zenana Mission Hospital, Asrapur, Itarsi, N. W. Railway.
25. Dr. (Mrs.) Angel Wilson, Lahore.
26. Mrs. E. Inglis, Lahore.
27. Dr. E. A. Wynne Cowie, L.R.C.P.S., Lady Physician in charge St. Andrews Mission Zenana Hospital, Rawalpindi.
28. Mr. Ram Swaroop, B.A., LL.B., President, Arya Samaj, Rohtak.
29. Pandit Din Dayal Sharma, Jhajjar.

NORTH-WEST FRONTIER PROVINCE.

1. Mir Karim Bakhsh, P.E.S., Inspector of Vernacular Education, N.-W. F. P., Abbottabad.
2. The President, Arya Samaj, Abbottabad.
3. Rai Sahib Dewan Muthra Dass, Kohat.
4. Dr. Abdul Samad, Medical Practitioner, Peshawar.
5. Rai Sahib Lala Jhanda Ram, Dera Ismail Khan.
6. President, Arya Samaj, Peshawar City.
7. Nawab Sir Sahibzada Abdul Qaiyum, K.C.I.E., M.L.A., Peshawar.

DELHI.

1. Rai Bahadur Lala Sultan Singh, Delhi.
2. Rai Bahadur Lala Moti Sagar, Vice-Chancellor, Delhi University, Delhi.
3. Dr. M. A. Ansari, Delhi.
4. Lala Radha Mohan, Rais, Delhi.
5. Khan Bahadur Abdul Rahman Khan, Advocate, Senior Vice-President, Municipal Committee, Delhi.
6. Dr. H. L. Keeve, W.M.S., Medical Officer, Victoria Hospital, Delhi.
7. Professor Indra, Delhi.
8. The Principal, Tibbia College, Delhi.
9. Hakim Alias Khan, Tibbia College, Delhi.
10. Shankar Lal, Esq., C/o The City Congress Committee, Delhi.
11. Maulana Kafayat-Ullah, Madrassa Aminia, Kashmiri Gate, Delhi.

THE AGE OF CONSENT COMMITTEE.

QUESTIONNAIRE.

NOTE.—*The queries below may be answered wholly or in part according to the sphere of experience of each person answering. Persons willing to answer should send their written replies so as to reach the Secretary, Age of Consent Committee, Simla, by the 15th August at the latest.*

1. Is there any dissatisfaction with the state of the law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code?

2. What are the circumstances which in your opinion justify—

- (1) retaining the law of the Age of Consent as it is, or
- (2) making an advance on the present law?

3. Are crimes of seduction or rape frequent in your part of the country? Has the amendment of the law made in 1925 raising the Age of Consent to 14 years succeeded in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes? If not, what measures would you propose to make the law effective?

4. Has the amendment of 1925 raising the Age of Consent within the marital state to 13 years been effective in protecting married girls against cohabitation with husbands within the prescribed age limit—

- (1) by postponing the consummation of marriage,
- (2) by stimulating public opinion in that direction, or
- (3) by putting off marriage beyond 13?

If not, what steps would you propose to make it effective?

5. What is the usual age at which girls attain puberty in your part of the country? Does this differ in different castes, communities or classes of society?

6. Is cohabitation common in your part of the country among any class or classes of people—

- (1) before puberty,
- (2) soon after puberty,
- (3) before the girl completes 13 years?

Do any of these cases come to court?

7. Do you attribute the practice of the early consummation of marriage before or at puberty, wherever it exists, to religious injunction? If so, what is the authority for and nature of that injunction, and does that authority prescribe any, and what penalty for its breach?

8. Is 'Gaona' or 'Garbhadan' ceremony usually performed in your part of the country? If so, does it coincide with or is it anterior to the consummation of marriage? Is it performed generally after the attainment of puberty and how soon after it?

9. Do you consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage? If not, at what age and how long after puberty may a girl's physical development be considered to be enough to justify such consummation without injury to her own health and that of her progeny?

10. At what age would a girl in India be competent to give an intelligent consent to cohabitation with a due realization of consequences?

11. During your experience, professional or otherwise, have you come across cases in which cohabitation before puberty, or after puberty but before full physical development of a girl resulted in injury to her health or body or prejudicially affected her progeny? If any, give details of age and injury sustained.

12. Do you consider early consummation and early maternity responsible for high maternal and infantile mortality, or for any other results vitally affecting the intellectual or physical progress of the people?

13. Has there been any further development of public opinion in your part of the country in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of the law in 1925? If so, is it general or confined only to certain classes?

14. Do women in your part of the country favour early consummation of marriage for their children?

15. Have any difficulties been experienced in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code? What measures would you suggest to remove or minimise these difficulties?

16. Would the difficulty or margin of error in determining the age be materially reduced or minimised if the Age of Consent is raised to 14 years or above?

17. Would you separate extra-marital and marital offences into different offences? If so, what is the nature and amount of maximum punishment you would prescribe for offences of each class?

18. Would you make a difference in the procedure of trials for offences within and without the marital state, and if so, what would you suggest in each case?

19. Would you suggest any safeguards beyond those existing at present against collusion to protect the offender or against improper prosecution or extortion?

20. Do you consider that penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage? Which of the two alternatives would be in consonance with public opinion in your part of the country?

21. Would you prefer to rely on the strengthening of the penal law to secure the object in view or on the progress of social reform by means of education and social propaganda?

EXTRACTS FROM THE INDIAN PENAL CODE.

NOTE.—The bracketed portions are to be omitted from and those in italics are to be added to the original as per Sir Hari Singh Gour's Bill.

SECTION 375.

375. Rape.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under (fourteen) sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.

SECTION 376.

376. Punishment for rape.—Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine (unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both).

Section 376-A.

376-A. Whoever has sexual intercourse with his own wife, the wife not being under thirteen years of age and being under fourteen years of age, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illicit married intercourse.

Extracts from the Code of Criminal Procedure, 1898, Schedule II.

Of Rape.

XIV of 1860 Section.	1	2	3	4	5	6	7	8
	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what court triable.	
376	Rape— (If the sexual intercourse was by a man with his own wife not being under 12 years of age.)	(Shall not arrest without warrant.)	(Summons)	(Bailable)	(Not compoundable.)	(Imprisonment of either description for 2 years, or fine, or both.)	(Court of Session, Chief Presidency Magistrate or District Magistrate.)	
	If the sexual intercourse was by a man with his own wife being under (12) 13 years of age.	Shall not arrest without warrant.	Summons	Bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.	
	In any other case	May arrest without warrant.	Warrant	Not bailable	Do.	Do.	Court of Session.	
376-A	Illicit married intercourse by husband with wife not under 13 and under 14 years of age.	Shall not arrest without warrant.	Summons	Bailable	Not compoundable.	Imprisonment of either description for 2 years, or with fine, or both.	Presidency Magistrate or magistrate of the first class.	

(11)

PUNJAB.

Written Statement of Rai Sahib L. GANGA RAM, President, Hindu Sabha, Kasumptal.

1—2. Whenever any case of rape occurs, it generally escapes due punishment at the hands of law. In my opinion sections 375 and 376 of the I. P. C. are not at all satisfactory to meet the requirements of morality, since there is the difficulty of producing evidence in court to make that crime punishable. The law punishes only those men who actually have a sexual intercourse with a woman if done against her will provided she is above 14. I would propose that the crime should be punishable both to men and women who participate in it whether done with or against the will of any one of them and that the age of consent should be raised to 15 instead of 13 in case of married women and 16 in case of others. Corresponding to these limits the ages of boys who take part in it should also be fixed at 24 and 28. At that age alone a girl and a boy can cohabit without incurring any injury to any of them. Only by so doing the standard of morality can be raised from the one established at present. Further, I would suggest that the punishment meted out to women should be comparatively lighter than that to men, but the former ought to be punished; provided of course, if any force has been applied in getting the consent or otherwise for intercourse, the person on whom such force has been exercised may be exempted from punishment. Women are as much to be blamed as men. To make the law still more effective the court should be satisfied with the examination of witnesses, the character and history of the persons concerned and should not press for medical evidence as to the condition of the genital parts. It is to the dread of this examination that most of the sufferers do not come to the court.

3. With regard to the first part of the question I would like to point out that the crimes of seduction or rape are not frequent in my part of the country. As regards the second part, I am unable to say as to how far the amendment of the law made in 1925 has succeeded, inasmuch as I have no knowledge of the cases of rape outside the marital state or the seduction of girls for immoral purposes.

4. With the progress of the educational and social propaganda mainly, and to some extent with the amendment of 1925, raising the age of consent within the marital state to 13 years, it has now become quite common to witness the marriages of girls above 15 and boys above 20; even if in certain cases the marriages are done earlier the consummation of marriages are postponed till they have attained these ages. But these cases are limited to the educated class of people. In order to make this practice prevalent among all, it is necessary to raise the age of consent, and thus make this practice legally effective and any other action punishable by law.

5. If by puberty the beginning of the monthly course and butting out of the bosoms are intended, it is attained, generally at the age of 12 in all castes and communities. Of course there is some deviation to the age above-mentioned depending on the sort of work they do and the nourishment they take. It might therefore be taken to range between 11½ and 13. If puberty is to mean the full growth of the sexual organs it ranges between 14 and 16 under different conditions stated above.

6. Cohabitation in my part of the country is rather common with girls before they attain puberty or before 13. The cases that are punishable by law very rarely come to the court, simply for the fear of the long procedure of the court to first prove the crime.

7. The practice of the early consummation of marriage can safely be attributed to religious injunctions. Most of the Sanatanist Hindus still believe in the following two *Shalokas* of "Parashra":—

चष्टवर्षात् भवेद् गौरी नव वर्षा च रोहिणी ।

दशवर्षात् भवेत्कन्या तत् ऊर्ध्वः राजसूया । १ ॥

माता चैव पिता तस्य ष्ठीष्ठमाता वधेय च ।

चमसे नरकं वाति दृष्ट्वा कन्या राजसूया । २ ॥

A girl at her eighth year is called 'Gauri' at the ninth 'Rohini', at the tenth 'Kanya' (girl) and after that 'Rajaswala' (one getting the monthly course). 1.

If the mother, the father or the brother (of a girl) sees a 'Rajaswala' girl (unmarried daughter or sister as the case may be beyond the age of 10) he is doomed to Hell. 2.

The Arya Samajists believe these 'Shalokas' to be the after insertions. So to them these are of no consequence.

8. 'Gaona' ceremony is rarely performed here. Wheresoever it is done it coincides with the consummation of marriage if the boy and the girl are quite healthy and young and can be allowed to cohabit with each other, otherwise it is postponed to some other date when it is considered that such a state has been reached. It has been postponed even to 7 years in certain cases. 'Garbhadan' ceremony is performed after 'Gaona' and there are some instances in which 'Garbhadan' has been performed before the girl had completed at least her 14th year. As a rule it is about two years after a girl attains puberty when the 'Garbhadan' generally takes place.

9. Mere attainment of puberty is no sufficient indication of physical maturity to justify consummation of marriage. It is believed that a girl is a child till her 8th year; during the period, between 9th and 12th year, her sexual organs are in the state of making, between the 13th and the 15th year these organs develop, and after the 15th year a girl can cohabit with a man without injuring either her own health or that of her progeny. If otherwise calculated, it comes to the girl having had 36 monthly courses before she can be fit for a sexual intercourse.

10. After a girl has completed her 16th year, she becomes quite competent to give an intelligent consent to cohabitation with due realization of consequences.

11. I have come across with many such cases wherein the girls below 13 years have received serious injuries which ultimately resulted in their physical deterioration and sometimes death.

12. Early consummation and early maternity are, in my opinion, greatly responsible for high maternal and infantile mortality, but not wholly, for, other factors, such as insufficient health, training, food, midwives and medical aid, too are responsible. There is, of course, no doubt that these actions are deteriorating the intellectual and physical condition of the people. The sooner these are stopped the better.

13. During the last five years, there has almost been a revolution, of course only, in the educated class of people against the very law that does not punish child marriage among girls and boys of 15 and 20 respectively, and which has kept the age of consent at the ridiculously low age of 13 in case of marital cases and 14 in case of extra-marital cases.

14. Women are generally in favour of early consummation of marriage simply because they are not educated and cannot therefore realize the gravity of the harm they are unconsciously committing thereby. The educated class of women are totally against this view of their uneducated sisters.

15. Indeed it is a difficult problem to determine the age of a girl who has been charged under section 375. The only way to get at the truth is

to look into the municipal records and examine evidences of the people who were friends of her father when she was born. Medical evidence is a mere guess work and cannot be relied upon.

16. As soon as the age of consent is raised the cases of rape will become rare and consequently the courts will not have to bother much to determine the age of the girl.

17. The marital and extra-marital offences should be treated differently. The extra-marital offences deserve greater punishment than the marital ones. The former may be punished up to transportation for life or 10 years R. I. with fine of Rs. 5,000 and in the case of latter up to five years R. I. or S. I. with fine of Rs. 2,000.

18. As in XLV of 1860, section 376, against rape with his own wife and with any other (no need of any alteration).

19. I am unable to make any useful suggestion in this respect.

20. In my opinion legislation fixing the minimum age of marriage at 15 and 24 in case of girls and boys respectively will be more in consonance with the opinion of the educated classes than the penal legislation fixing a higher age of consent for marital cases. This is the more direct way of making reforms in the marriage system than the other one which is like "beating about the bush".

21. The strengthening of the penal law will be a ready and more effective means to secure the object in view than the one by progress of social reforms and educational propaganda. The latter will, of course, be made smooth but very lengthy. But we have no time to waste, so inspite of all opposition I shall go in for the first.

***Oral Evidence of Rai Sahib LALA GANGA RAM, President, Hindu Sabha, Kasumptat.**

(Simla, the 5th September, 1928.)

Chairman: How long have you been President of the Hindu Sabha?

A. For the last 6 years.

Q. What is the membership of the Sabha?

A. 38.

Q. Was this questionnaire considered at all at any meeting of the Hindu Sabha or is this your representative opinion on behalf of the Sabha?

A. That is on behalf of the Sabha.

Q. I understand that no particular meeting of the Sabha was convened for discussing this questionnaire.

A. No formal meeting was held but I informally consulted some of the members.

Q. Has there been any dissatisfaction during the last three years since the last amending Act was passed?

A. I do not think it is publicly known.

Q. Have you heard that there has been any dissatisfaction with the existing law either among progressives or conservatives, some saying that it was too little and others saying that it was too much?

A. So far as my knowledge goes, the progressive societies such as the Arya Samaj and others have been raising their voice against the existing law as it stands, suggesting that the age which has been fixed under the existing law is ridiculously low. There has been dissatisfaction among a section on the Arya Samaj about it.

Q. Have you heard any dissatisfaction as to its being too high or that it should not have been increased?

A. So far as my knowledge goes, the reply to this is in the negative.

Q. Do you think now if we increase the age still further there will be any discontent among the people?

A. I do not think there will be any remarkable discontent. The orthodox section will no doubt continue showing their resentment as usual.

Q. Do I understand correctly from your written answers to the questionnaire that you not only want the existing sections of the law amended but a section added to the effect that both a girl and a boy who commits the offence, whether with or without consent, should be punished?

A. That is my opinion.

Q. That is besides the scope of our enquiry. You have said that there is a difficulty of producing evidence in courts in cases of rape and this is not satisfactory to morality. Do you mean any special difficulty?

A. I mean difficulty in a general sense.

Q. Any particular difficulty in proving cases of rape?

A. Yes.

Q. What are the particular difficulties with regard to evidence in cases of rape?

A. As far as I understand the people resent to go to the courts to give evidence in such cases, and if the rape is within the marital connection, of course those who are in the know, find it rather inconvenient to express such an opinion publicly. Outside the marital connection, I have come across one or two instances in which it has been found very difficult to prove that a rape has been committed although those persons who were in the know could give evidence to this effect, but they refused to give it on account of certain circumstances.

Q. Do you suggest any remedy to get over these difficulties, in the way of amending any procedure or anything like it?

A. I cannot suggest anything more, except what I have stated in my written answers.

Q. Do you find these difficulties in other cases also?

A. This is a crime in which no one would like to stand a witness to give evidence.

Q. I draw your attention to your answer to Question No. 4. Do you mean to say that there is a large number of people who go in for early marriages outside the educated classes?

A. Yes, that is my information.

Q. And early connections also?

A. Yes, soon after puberty.

Q. Do you think there is a large class besides the educated class among whom early marriage and early connection prevail?

A. Yes.

Q. Now what percentage would you put of the people that you know of who have this early marriage or early connection?

A. It is difficult to give the exact percentage. Among the hillmen where I have been working as a social reformer, about 80 per cent. of the people marry their daughters at a very early age.

Q. And you presume that there is also connection before the girl attains puberty?

A. Yes, among the hillmen.

Q. In the Simla hill districts?

A. Yes.

Q. Now you have suggested in para. 4 that 'it is necessary to raise the age of consent, and thus make this practice legally effective and otherwise punishable by law.' Do you think that raising the age from 12 to 13 has

had any effect in preventing actual unions, in overcoming the difficulty of getting evidence of the relations and so on?

A. I do not think it has.

Q. Do you think that raising it from 13 to 14 or 15 for instance will check that materially?

A. As I have said, raising the age from 13 to 15 will check that materially.

Q. In your answer to Question 20 on page 5 you have suggested two ages 15 and 24 as the minimum ages for marriage. Did you have in mind Mr. Sarda's Bill in connection with this?

A. I had my own Shastras in my mind, and Mr. Sarda's Bill is in consonance with the opinion I have expressed.

Q. Can you suggest any method of making a higher age of consent more effective than what it is at present?

A. By legislation.

Q. Legislation will increase the age only, but how would you make it effective? How will you make it effective whether you make it 14 or 15 or 16?

A. It will be for the social reformers to popularise the measure.

Q. Would you prefer legislation for checking marriages, laying down that before a certain age marriages are not permissible, and penalise them?

A. Yes, I prefer penalising the age of marriage, making an infringement punishable under the law.

Q. You know that Mr. Sarda has brought in a Bill about that, bringing in the guardians and others who assist under the law. Would you rather prefer that kind of penalising the marriage?

A. Yes.

Q. In your answer to Question 6 on page 2 you have said 'The cases..... very rarely come to the court for fear of the long procedure of the court to first prove the crime.' Would you suggest any remedy to cut this delay short? Would you suggest summary trials in such cases?

A. Yes, summary trials would be more acceptable than trials having long procedure.

Q. By a Magistrate of the first class?

A. By a senior Magistrate.

Q. Are you aware that orthodox opinion has very little sympathy either with the raising of the age of consent or with checking marriages?

A. I am fully aware of this fact.

Q. Do you suggest any method by which we would not cause dissatisfaction amongst the orthodox people and yet attain purpose by postponing connections, say, beyond 14 or 15 or 16?

A. I can suggest only two methods, one by legalising the thing and the other by preaching. Preaching, although a smooth process, takes a long time and may be ineffective.

Q. By legalising, I think you mean penalising?

A. Yes.

Q. In reply to Question 11 you refer to 'girls below 13 years who have received injuries which ultimately resulted in their physical deterioration and sometimes death.' How many cases have you come across like that?

A. Four cases in which marriages took place at a very early age and the poor girls who were under 13 years had to suffer the consequences of early cohabitation.

Q. Do you know the results in each case?

A. In one case a girl got rheumatism and other diseases which I cannot name.

Q. Female diseases?

A. Yes, and ultimately she died after a couple of years. That was unfortunately amongst my own relations. In Amritsar three girls were married early to husbands ripe in age and the result was that by cohabitation they lost their lives after two or three years. All the four cases I have come across among my own people.

Q. Question 12, you refer to intellectual and physical condition. What is your ground for saying that there is intellectual deterioration? Do you know of any other case besides the four quoted by you where there was any such degeneration, sterility, for instance?

A. Among the hillmen of course 60 per cent. of the girls are sterile on account of their immoral character, and to some extent early connection; i.e., on account of early connection as well as through immoral character.

Q. Amongst the urban population, have you noticed any evil consequences or degeneration such as you suggest?

A. Yes, I remember the case of a girl, 14 years of age. She gave birth to a child and that child has never been healthy. At about 18 years that girl got phthisis and the result was death. I know a relative of mine who had a daughter and he married her at the age of 13½. She gave birth to a child at the age of 15. After that she gave birth to 4 or 5 children. They are keeping very bad health. The girl died after the birth of the fifth child.

Q. Is it your general impression that on account of early marriage besides the personal loss in health of the girls concerned, there is deterioration in other ways?

A. Yes.

Q. How would the people in that part of the country where you live take a law for checking marriages?

A. Orthodox opinion will be against such a law. But the law will have a healthy effect ultimately.

Chairman: Would you advise in spite of orthodox opinion that this law should be passed?

A. Yes, in spite of orthodox opinion I would suggest that the law should be passed.

Q. In your answer to question No. 16 you have said that as soon as the age of consent is raised the cases of rape will become rare. To how much may the age of consent be raised so that rape cases may become rare?

A. As I have suggested in answer to questions Nos. 1 and 2, 15 instead of 13 in the case of married women and 16 in the case of others.

Pt. Kanhaiya Lal: You are the president of the Hindu Sabha.

A. Yes.

Q. Is the opinion which you have sent the opinion of the Sabha?

A. Yes.

Q. You are a resident of Amritsar.

A. Yes, I am a resident of Amritsar.

Q. How long have you been connected with Simla?

A. 23 years.

Q. In what capacity? What have you been doing?

A. I have been performing social work here in the hills and in the urban areas of Simla.

Q. Are you doing any social work now, or are you in employment or what?

A. I am a Government employee.

Q. You have been able to find time to do some social work in the hills.

A. Yes.

Q. In what class of people have you been doing the work?

A. Among the untouchables and among the general population of Hindus.

Q. Social reform, that is to say, raising the depressed classes?

A. Yes, removing untouchability and at the same time reforming the Hindus in general.

Q. You say that there is dissatisfaction with the existing law as to the age of consent among the educated classes.

A. Yes, among the educated classes there is a great dissatisfaction.

Q. What is the attitude of the orthodox classes?

A. As far as my experience goes, the orthodox will always be against any social reform. They do not want any legislation to be passed which may affect their religion.

Q. What about the rural classes?

A. They do not know the law at all.

Q. What attitude would the rural classes take, if you raise the age both for marital and extra-marital cases?

A. My opinion is that the rural classes will have practically very little knowledge that such a law has been passed. Of course, if one or two cases are brought before a court of law those who are in the neighbourhood will understand that such a law exists and that in future they should not marry their girls before such and such an age. The rural classes generally do not interfere in such cases. They keep themselves absolutely aloof from what goes on in the outside world.

Q. But if we have such a law, would they welcome it?

A. Orthodox opinion, as I have already said, will not welcome it, and those who are a little advanced among the rural classes will certainly welcome it.

Q. Have you any methods to suggest for making the law generally known, if the age is raised?

A. As I have already told the Chairman, it can be done by popularising the thing or by preaching or propaganda work.

Q. Suppose we were to translate the law into different languages and ask the lumbarbards, Patwaris or Patels, and other village officials to make the law generally known by distributing pamphlets, leaflets, etc.

A. Yes. This will have great effect, but at the same time I must tell that illiteracy is so prevalent among the village people that even the Lumbarbards and Patels know absolutely nothing of any language. But this method of distributing pamphlets and circulating translations through the Lumbarbards and Patels will have a healthier effect.

Q. Are the rural classes not anxious for the protection of their girls?

A. They are and they ought to be.

Q. We are told by various witnesses that the number of seduction and rape cases is very large in the hill tracts. Well, in that case, do you think that the raising of the age both for marital and extra-marital cases would have a healthy effect and stop the evil to some extent?

A. Yes.

Q. You have said in your answers that not only boys but girls should also be punished.

A. Yes, that is right.

Q. Don't you think, it will ruin the life of the girl if she is sent to jail?

A. No, I don't think so. Last night I was reading the custom in Japan about marriages, and fortunately I came across a clause saying that the age there was 25 in the case of girls and 30 in the case of boys.

Mr. Ramaswami Mudaliyar: Inside the marital state or outside the marital state?

A. Outside the marital state.

Pt. Kanhaiya Lal: What is the book you are referring to?

A. Recently some gentleman by the name of Rao Sahib Awatsing M. Advani, a pleader from Sukhur, went on tour and he has written a book 'My World Tour'.

Q. You are copying from Japan when you say that not only the boys but also the girls should be punished?

A. No, I had not seen the book when I sent in my statement. I simply mean that I came across a book which corroborated my statement.

Q. Will not the life of the girl be ruined, knowing as you do the surroundings in jail?

A. I have suggested a lighter punishment in the case of girls.

Q. Do you mean a fine?

A. Any sort of punishment which may be considered reasonable, either fine or simple imprisonment.

Q. Do you recognise that it will be a fine on the parents and not on the girl?

A. But it will have a healthy check on others.

Q. On whom?

A. On the other persons.

Q. But don't you think that imprisonment even for a month, substantive or in lieu of fine amid jail surroundings, may make her life worse?

A. Well, I cannot suggest any reform about jails here, but I can suggest how a girl should be kept in prison. She can be put into an isolated cell, I mean a cell which is not intended for a regular criminal. She can be treated in such a way as girls generally are, in some cases, when they commit crimes which are punishable under the law and receive punishment.

Q. Will not a girl who has gone wrong be under better protection if she continues to live under the protection of her parents or others who might be able to exercise some guardianship over her than if she is sent to jail?

A. My opinion is that we must have some radical treatment in such cases and the radical treatment which I suggest is that the girls should equally be punished, though they should receive lighter punishment.

Q. Do you suggest that both for married girls and girls outside the marital state?

A. Yes, I suggest for both.

Q. Then your opinion is that if a husband commits rape on a girl wife below the prescribed age limit it is not only the husband who deserves to be sent to jail but also the girl?

A. But, the question is, whether it is with her consent, or, without her consent, or, whether, any force has been used.

Q. No, it is not a question of force. When an age limit has been prescribed consent below that limit is quite immaterial. If in that case, you send both the boy and the girl to jail, don't you think that both the parents of the girl and, the parents of the boy, will combine, in keeping the case out of the court?

A. To meet the ends of justice, I think, both of them should be punished.

Q. But, the ends of justice will be defeated, because, in that case, the parents of both the boy and the girl, will try to suppress all information, about the crime.

A. I admit the force of your argument, but to meet the ends of justice it is necessary to punish both. If you are going to punish the husband, the girl should equally be punished, although, she should receive a lighter punishment.

Q. But, I am talking of marital cases, and, am trying to find out, whether or not the ends of justice will be defeated by reason of the possibility of

collusion, between the parents of the husband and the girl if both are made liable to punishment.

A. This will, however, have a healthier effect.

Q. Are you aware that, in bribery cases, the Government has found great difficulty in getting evidence, simply because not only the man who takes the bribe, but also, the man who gives the bribes is also punishable and so many cases go unpunished and undetected.

A. It is a matter of opinion.

Q. I am putting a concrete case before you. The fear is that judging by cases of that character we shall make our position worse.

A. I have already said that it is a matter of opinion.

Pandit Kanhaiya Lal: Outside the marital limit if girls under the prescribed age are sent to jail for having consented to cohabitation with another person, would there not be a danger that the girl after having seen jail life and lived with criminals might become a desperate person and do things which she might not have done otherwise and possibly lead an immoral life?

A. There is danger but there is safety as well. Safety in this case because if she receives punishment and if she belongs to a respectable family or if she remains in a healthy atmosphere she will rather be reformed instead of getting worse.

Q. Don't you think there will be some difficulty in getting her married after she has been in jail?

A. Yes, but the crime she commits is of no small consequence.

Q. Will not the difficulty be less if there is less publicity, that is to say, she can revert to normal life after the case is decided.

A. My opinion in the case of Hindu society is that Hindu women once they are produced before a magistrate in such cases lose their reputation and the effect is the same on their marriage as in the case of their being sent to jail, provided it is proved that they have committed a certain crime. So there is no danger if once they go before a magistrate whether they get punishment or not. Hindu opinion is very strong in this respect.

Q. Are you aware that life in jail is generally considered to be very degrading particularly as the person who is sent to jail is surrounded by dangerous criminals and at times by unscrupulous staff?

A. I am aware of that.

Q. Are you not increasing the danger to the girl by subjecting her to conditions which may conduce to immorality if she lives in those surroundings?

A. I am increasing the danger so far that particular girl is concerned but at the same time I am protecting the society from such a danger. My opinion is that if she is sent to jail she of course has got very unhealthy surroundings, but if she escapes this punishment and she remains in society as a member of the society, she spreads more poison and she proves herself to be a more dangerous person for the society than if she is sent to jail.

Mrs. O'Brien Beadon: You mean to say that if a woman is punished by being sent to jail, it will have a tremendous effect on other women and keep them straight?

A. It will have a deterrent effect on others.

Pandit Kanhaiya Lal: When a rape is committed by consent, it is generally committed secretly!

A. Yes.

Q. And it is usually difficult to produce evidence?

A. I have said in my statement that it is very difficult to produce evidence in court to make that crime punishable.

Q. If, as you suggest, the girl is to be sent up as a co-accused would it not render the successful conclusion of such cases very difficult, almost impossible?

A. I don't think so.

Q. In another portion of your answer you suggest that the punishment to be inflicted on the boys and girls in marital and extra-marital cases should be 5 years and 10 years and a fine of Rs. 2,000 and 5,000 respectively. Don't you think that in marital cases at all events both the imprisonment and the fine are extremely excessive?

A. I do not think they are excessive.

Q. Would not this be virtually a fine on the parents?

A. If the parents are responsible for producing such children, I think they must be made equally responsible to undergo the punishment.

Q. The parents are only responsible for producing children, but not responsible for the acts of their children that lead to these crimes?

A. Parents are responsible for not keeping a proper check on their children.

Q. You recognise (I suppose) that if the boy is sent up for 5 years' rigorous imprisonment or anything like it, his education and career will be ruined, and the wife will also suffer in consequence?

A. Yes, but at the same time it will have a deterrent effect on other members of the society.

Q. Do you recognise that over-stringent legislation defeats its own object?

A. Even here I would say it is a matter of opinion because I know when Tanganyika was under the possession of German Government such deterrent punishments were given and had a very salutary effect.

Q. There the whole thing was probably influenced by racial considerations. In extra-marital cases you have suggested 10 years' imprisonment and a fine of Rs. 5,000. Who is to pay this fine?

A. The persons who are concerned. If the boy is fit, he should pay or he should undergo further imprisonment. If the parents are fit, they should pay the fine.

Q. Often in such cases fines are not realised?

A. They should undergo further punishment in lieu thereof.

Q. Does your Hindu Sabha approve of this suggestion?

A. I am sure they would suggest a heavier punishment, if consulted.

Q. You further say that there should be no medical examination of girls?

A. Because I do not believe in the medical examination.

Q. At the same time you have pointed out difficulties in producing evidence. Will not your suggestion make the difficulties greater?

A. In order to find out the age of the girl I have suggested certain methods.

Q. You have already admitted that there are great difficulties in getting evidence. One valuable way is to get medical evidence both as to the condition of the parts with reference to the offence and as to the age of the girl; and yet you state that medical evidence about the condition of the parts should be excluded. Are you not multiplying difficulties?

A. Medical evidence is a mere guess work and I have reason to believe that in such cases medical evidence are generally manufactured. Medical men can only say that the condition of the genital parts is such that a rape has been committed.

Q. If you exclude medical evidence about the condition of the girl after the commission of the offence, how shall we be able to prove definitely in many cases the commission of the offence itself?

A. By medical evidence, so far as the condition of the genital parts is concerned.

Q. So you are willing to admit medical evidence so far as the condition of the parts is concerned?

A. Yes, only in regard to the examination of the genital parts.

Q. The age is also determined partly by the condition of the parts and partly by general physical development.

A. It is a mere guess work. I do not understand how the age can be fixed by examining the genital parts.

Q. Medical men can say by examination that a girl is of such and such an age.

A. But the condition of the girl sometimes deceives medical men in determining her age.

Q. You say at times!

A. Yes. I have never found that it is necessary to examine the genital parts to tell a woman's age.

Q. I may tell you that in many cases tried by the High Courts in the country, medical evidence has stood the test of cross-examination and has often been found to be more satisfactory than oral evidence about age of persons interested in the punishment of the accused.

A. I do not know of such cases.

Q. What evidence would you try to find for proving the age?

A. I have already stated in my answers that the only way to get at the age is to look into the municipal records and to examine the evidence of the people who were friends to her father when she was born.

Q. That is to say you rely on the birth reports which give no name of the girl concerned and you would rely on the parents or relations who are very often interested. Will not all these place the accused in a position of jeopardy?

A. As far as I can make out the municipal registers and the evidence of the people who are friends of the person concerned should be sufficient.

Q. Municipal records do not give the name of the girl.

A. At the same time they could not have two children in the same year. There is always a difference in the ages of the children.

Q. The child whose entry there is in the Birth Register may have died some time ago and questions of identity may arise?

A. But medical evidence is equally guess work.

Q. Would you allow the accused to support his defence by medical evidence?

A. Yes, it will be better, if the accused produced medical evidence of the age of the girl.

Q. You would have objection to the medical evidence being produced on behalf of prosecution; but you would have no objection to the accused producing the same evidence in proving the age?

A. I have none.

Q. By guess work you mean that if medical evidence is produced you would attach little value to it.

A. Yes.

Q. Would you make it a rule that the name of the child should be entered in the registers?

A. The naming ceremony is performed after some time.

Q. You think that is not practicable?

A. No.

Q. A suggestion as been made that after a child is named an obligation should be cast on the parents or guardians to report to the village officer concerned the name which has been given to the child and that name should be recorded in the register against the proper entry.

A. That is a lengthy procedure and I do not agree with it.

Q. Another suggestion has been thrown out that at the time the report is made of the birth of a child the village officer concerned should issue a certificate stating the fact of the birth, the names of the parents and the sex of the child.

A. As far as my knowledge goes the municipal offices give a certificate to this effect containing the sex of the child, the names of the parents, and the date and time of birth. This certificate is given in the Punjab.

Q. Is it merely a receipt acknowledging the report or is it a certificate showing the details as entered in the register?

A. It is a copy of the entries made in the register.

Q. Is this practice being followed in the rural areas where the chowkidars or the persons concerned are mostly illiterate.

A. In this part of the country in which I have been doing social reform work no such reports are made and no registers are kept.

Q. In the hills are the births and deaths not reported?

A. Births or deaths are not reported regularly. In some cases omissions are made and nobody cares.

Q. Do not the rules require that every birth and every death should be reported within 3 days?

A. As far as my knowledge goes such rules are not observed in the Hill States.

Q. May I understand from you that a copy of the entry which you call a certificate is invariably given in towns to the person who goes to make a report?

A. Yes.

Q. Are these records permanently preserved?

A. Yes, in municipal offices.

Q. Are the chowkidars' records also permanently preserved?

A. I have never seen chowkidars taking enumeration of such facts.

Q. There must be somebody here corresponding to the chowkidars in the United Provinces doing this work.

A. In the Simla Hills there is no such person.

Q. Are you aware of the system in force in the rural areas so far as British territory is concerned?

A. No.

Q. In what Native State are you living?

A. Keonthal State.

Q. Another suggestion has been made that persons who go to make a report about the birth should be required to put their thumb marks or signatures in the birth registers to prove their identity and as a guarantee that the man who makes the report takes the responsibility of giving the facts correctly?

A. This suggestion seems rather good and should be adopted.

Q. How would you like the proposal regarding the registration of marriages?

A. No, I do not agree with it.

Q. In marital cases there is always greater difficulty in proving the age. In order to obviate that difficulty it has been suggested that marriages should be registered, that is to say, the priest who celebrates the marriage as well as other guardians who get the marriage celebrated on both sides should make a report to such authority as may be prescribed by law and obtain a certificate that a certain girl has been married to a certain person and that they are of such and such ages?

A. From whom.

Q. From the Sub-registrar or the Tahsildar or such Police officer or other person in every Tahsil or Police station, who may be charged with the duty?

A. In my opinion if marriages are to be registered they ought to be registered by the priests who perform the ceremony just as it is done in the case of Anand marriages. Similarly I would suggest, if registration is necessary, they should be done by the priest and not by any of the officials you have suggested.

Q. You are in favour of the issue of certificates by the priests alone?

A. I will only keep registers showing particulars of the marriages and if necessary a copy of the entries can always be obtained.

Q. Would it not be greater protection if at the time of entry, a certificate containing the requisite information is given to the parties concerned so that the chances of future interpolations may be minimised or reduced?

A. I do not think it is necessary for the priest to give certificates of this sort.

Q. We frequently come across cases in which interpolations have been made and entries manipulated. What safeguard would you suggest to meet the difficulty?

A. I am unable to make any useful suggestion just at present.

Q. You say that cohabitation is common before 13. Are you referring to the hill-people?

A. Yes.

Q. Is it common even among the up-country people?

A. I have got personal knowledge of the hill-people only and it is common among them.

Q. Is it due to poverty or to other considerations?

A. To some extent it is due to poverty, but to a great extent to the customs which are prevalent.

Q. We have been told that they want money, and that they would agree to anything immoral, if they get it; and that is one of the main reasons why consummation takes place earlier among the hill-people? Is that so?

A. I do not think any money is demanded in the case of the first marriage. In the case of later marriages, of course, money is demanded from the new husband with a view to pay it to the husband.

Q. If there is no question of poverty, what is the main reason?

A. The custom of early marriage.

Q. You say that the custom as such is prevalent among the hill-tribes?

A. Yes.

Q. You have suggested that marriage legislation is likely to be more effective. But is it not possible in certain circumstances that parents who might be unwell or who are influenced by other considerations might risk a fine or other punishment and get the marriage celebrated in defiance of the law, because they want it to be celebrated in their life-time, and consummation may follow?

A. If the punishment is fine as well as imprisonment, then in that case if they are prepared to suffer the consequences, they can do so.

Q. Then the object of the law is defeated by a simple defiance of it.

A. I do not think it can be prevented. If they are prepared to ignore the law, then in that case they ought to suffer the consequences.

Q. But the consequence generally would be a mere fine, because the courts would ordinarily be reluctant to award imprisonment in technical cases of this character.

A. Even if deliberate action of this kind has been taken?

Q. It is not a case of moral depravity, when a heavier penalty is invariably exacted.

A. It may not be moral depravity, but surely it is mental depravity, which should equally be punished. If the courts are lenient, I have nothing to say. But in my opinion such cases should be severely punished.

Q. There is a law to that effect in some of the Indian States, but the people there often defy the law and the State may be making a handsome income by way of fines. A State may be unwilling to send too many people to jail.

A. That is a question for the administrators to answer, and I have no observations to make in regard to that.

Q. Would you eliminate fine from the punishment?

A. If Rs. 2,000 is imposed on a man who can hardly pay it, it is sufficient punishment for him.

Q. But the fine may not always be realised.

A. I will not exclude fine in any case. When it is considered necessary, fine should be imposed.

Q. Would you also have legislation to prevent consummation of marriages before the proper age is reached, that is to say, some penal legislation fixing the age of consent, so that man may have two strings to the bow, one a marriage legislation and the other a penal legislation to regulate the age of consent?

A. I have already replied that I am in favour of penalising.

Q. I am talking of both kinds of legislation. If a man defeats the one he may not be able to escape the other.

A. It is better. Any legislation is better, provided it improves existing conditions.

Q. You have said in your answers that the age of consent should be fixed at 15 and 16 respectively in marital and extra-marital cases. Do you adhere to that opinion and recommended that marriage legislation should be an additional remedy?

A. Yes.

Khan Bahadur Mahbub Mian Imam Baksh Kadri: You suggest that in the case of extra-marital relations the age limit should be 16. But till 18 a girl is legally a minor. Do you realise that, when you say that in the case of extra-marital relations the age limit should be 16, you are leaving that fact of minority out of consideration.

A. For the purpose of consummation of marriage.

Q. You mean extra-marital cases!

A. Yes.

Q. You say that the connection between a girl and a stranger should be penalised if the girl is below 16. Till 18 one is a minor and do you say that before attaining 18 she will be able to give her consent with a full realisation of the consequences.

A. At 16 she can.

Mr. A. Ramaswami Mudaliar: You refer to the difficulties of proof in these cases. If the cases are tried in camera without being given publicity to the press and the other persons who are present, do you think there would be any less difficulty?

A. Difficulties will remain even if the cases are tried in camera. The persons, I have indicated, will not be ready to give evidence.

Q. On what grounds? Because the husband will be punished?

A. Yes, they will lose reputation and the society will not be prepared to give evidence in view of certain circumstances.

Q. In the marital state if an offence is committed by the husband there is no real loss of prestige so far as the girl is concerned. (At the present stage of public opinion there is no loss of respect. The marriage has been performed and the cohabitation takes place.) In marital cases, supposing

camera evidence is provided for, and supposing the names of the parties are kept out from the press in such cases, do you think that the people will then more readily give evidence?

A. Yes, but the difficulty is that people are not in the habit of going before Magistrates and giving evidence in such cases, whether in camera or not.

Q. So legislation on this point will not be effective?

A. So I have suggested the raising of both the age of consent and the age of marriage. I would give preference to raising the age of marriage.

Q. As regards the age of marriage, you are aware that orthodox opinion is against that (for marriage) particularly. Are they more against raising the marriage age than against consent age?

A. They are against both.

Q. The text that you quoted refers to marriage and not consummation of marriage.

A. It refers to the question of celebrating the marriage at a particular age.

Q. Are you not aware that orthodoxy is more against marriage than against consent at the present time?

A. I have already replied that they are against both.

Q. As regards punishment, you have suggested 5 years in marital cases. Is 2 years insufficient?

A. The present punishment is very lenient.

Q. Is there any case in your knowledge where a man has been punished for 2 years, particularly a husband?

A. There may be such cases, but I have no knowledge of them.

Q. Then, what basis have you got for suggesting an increase?

A. In my opinion, deterrent punishment will have a healthy effect.

Q. Where two years has been given, and no case has been reported, if five years is given, will it not make the chances of cases coming to court less? Don't you think that it would have the opposite effect?

A. No; provided punishment is not regarded a secondary question.

Q. Then you do not insist on 5 years?

A. I do and have consequently suggested severe punishment.

Q. Are you not really looking at the gravity of the offence with horror rather than on the possibility of a repetition of the offence? Are you not really carried away more by the horror of the crime than the effect of the law?

A. The crime, in my opinion, is horrible, and therefore naturally creates more horror.

Mrs. Brij Lal Nehru: Are you giving these answers on behalf of the hill-tribes only or on behalf of the rest of the Punjab to which you belong?

A. I have given evidence as far as my personal knowledge goes with regard to the hill-tribes as well as with regard to the urban areas, excluding the rural areas about which I have no experience.

Q. Do you think that consummation before 13 is practised among the hill-tribes only or in the whole of the Punjab?

A. Among the hill-people mostly; to some extent among the people in urban areas.

Q. Then with regard to this particular fact, you are speaking more for the hill-tribes than for the rest?

A. Yes.

Q. You say that cohabitation takes place before 13. Does it apply to the hill area only?

A. More or less to the hill area.

Q. And do these people in the hill areas belong to your community?

A. Yes, they belong to my community.

Q. When you give the percentages of child marriages as 50 per cent. or 80 per cent., on what do you base them?

A. On the calculations which we generally make.

Q. Do you keep any register or figures of the marriages that take place? Is it merely a guess or is it recorded somewhere; or is it from some recorded evidence that you might have taken on this question?

A. I have based my calculations on the marriages that take place among the hill people.

Q. You have not got any registers kept, nor do you base them on any census.

A. No.

Q. Then it is only just an idea?

A. Yes, but this idea I have framed on personal experience.

Q. You have given 4 cases of girls who suffered because of early cohabitation. Was the age in these cases below 13?

A. In two cases below 13; in one it was 14; in one 13½.

Q. I heard you saying when you are advocating punishment for girls that, you wanted them to be kept in jails but in better surroundings. Do you advocate their being kept in some sort of a reformatory school?

A. I think it will be better if they are kept in reformatory schools.

Q. You have suggested that so far the Age of Consent Act has been more or less a dead letter. What is then your reason for saying that if you raise the age of consent from 13 to 15 it will be effective?

A. It will not prove injurious to the healths of those who cohabit. Our object is of course to make the law effective.

Q. You have said that so far the law has not been effective. If the law remains as it is, and merely the age of consent is raised in what way or by what method will the law become effective?

A. Effective in the sense that the raising of the age limit will not prove injurious to the health of the parties.

Q. Then it acts as a propaganda only?

A. Yes.

Written Statement, dated the 10th August 1928, of Mr. JAGAT PRASAD, Accountant General, Posts and Telegraphs, Simla.

1. I have not noticed any dissatisfaction in any class or section of the community on the score of the law going too far. Some earnest social thinkers do consider the law inadequate but this feeling from the very nature of the case can neither be general nor is it, in my opinion, sufficiently intense to be considered a positive dissatisfaction.

2. (1) I would retain the law as it is in the case of married girls. I do think that even in the case of married girls, the age of consummation should be higher than the law provides for, but it seems to me that any provisions of the law in this matter would be ineffective beyond saving immature girls from immediate physical consequences of a violent character.

(2) In the case of unmarried girls, I think protection is wanted to a much higher age than the law provides for. Strictly speaking, unmarried girls should be protected up to an age at which they would be able to realise the consequences, physical as well as social, of extra-marital intercourse. I would therefore put this age at 18 years in the case of Indian girls. Practical considerations may necessitate a lowering of this age, but in any case, I would not put it at lower than 16. I think the law in India

in this matter has to be more strict than in European countries because of the different social circumstances prevailing in India. Among the wealthier sections of the community in India there is an abnormal desire of procuring girls of a fairly tender age for immoral purposes and this demand is provided for either by criminals or by certain sections of the community which consider it legitimate to trade on their daughters or, in exceptional circumstances, by greedy parents or guardians of other communities. I think, raising the age in this respect can create no legitimate grievance in any section of the community. I realise that in some rare cases it may involve a hardship to the girl herself to put the age too high in this respect, specially if no provision is made by the State for the training of girls of all classes to useful independent occupations, and it may be desirable to put the limit at lower age than what purely theoretical considerations would dictate.

3. I have no definite information on this point nor do I know of a sufficient number of cases, one way or the other, on which I could base my opinion in this matter. Cases of this character do, however, appear to be rare. Intercourse in marital state, which would technically be rape under the law does not appear to be at all common in the Punjab and the United Provinces. Even such cases as many occur would seldom come to the notice of the public or brought to a Court of Law.

4. I have no reason to think that the amendment of 1925 has made any difference, one way or the other, in this matter. For the last ten years or more, there has been a very healthy tendency in all sections of the community in upper India to postpone the date of marriage as well as consummation beyond 13. This is quite independent of the law.

5. I would put the age of puberty generally in all sections of the community at 13. I have no reason to think that in this respect one community or class of society differs from another in India. Possibly in the small Anglo-Indian community the age of puberty may be put later.

6. I do not think cohabitation before puberty or soon after puberty or before the girl completes 13 years is at all common in the Punjab and the United Provinces. As I have already remarked, if any such cases do occur among married persons they will seldom come to Court. Other cases appear as ordinary crimes, but they do not appear to be common.

7. I think in Northern India religious injunction has very little to do in determining the age of marriage or consummation of marriage. Some people do refer to the Shastras as enjoining consummation soon after puberty, but this injunction does not affect the conduct of any class of the community in these matters very seriously. All the same, there is a fairly keen desire in the community generally to bring about early marriage of their girls, but, in my opinion, the root cause of this desire is the legal position of women in India. Marriage is looked upon as the only means of settling down a girl in life and giving her a legal status, and parents have the same desire to marry their daughters early as they have to settle down their sons in life as soon as possible.

8. "Gaona" ceremony is fairly common in Northern India, and it coincides with the consummation of marriage. It is not generally performed before a girl is 14 years of age, even though the marriage may have taken place two years or more earlier.

9. This question is really for medical men to answer. I have read some literature on the subject, but I do not consider it desirable to base my opinion in this matter on such reading. My opinion as a layman based on experience and general observation is that puberty is not a sufficient indication of physical maturity to justify consummation. I have seen girls belonging to the same class of community and living in similar circumstances show a far better physical development if they remain virgins up to the age of 15 than if they begin to live a married life earlier. My impression is that after the age of 15 consummation by itself does not do any physical harm to a girl, whereas, judging from cases that have come to my notice, it would seem that earlier consummation causes some internal displacement of the organs which leads to certain characteristic female diseases. Even after 15 frequent child-

birth does seem to deteriorate a girl's health, whereas in the case of a normal healthy woman of over 20, even bearing children every two years does not seem to bring about any physical deterioration.

10. I believe this question relates to an unmarried girl and not a married girl. As I have already stated in answer to a previous question, an intelligent consent to cohabitation with a due realisation of all consequences, physical and social, is not possible before 18.

11. My opinion based on general observation is that cohabitation ordinarily before the age of 15 retards proper physical development and I think it affects the progeny also. Not being a professional man, I cannot give a detailed account of the cases I have in mind.

12. I cannot say what is meant by 'early' consummation in this question. I think consummation and maternity after the age of 15 do not ordinarily bring about any undesirable physical consequences, but they do seem to lower the general tone of health and intellect in women and seem to deprive them of energy and spirit of enterprise, intellectual occupations and keen social enjoyments of other kinds to which the majority of unmarried girls readily take.

13. I think public opinion and practice in Northern India was as a whole fair in advance of the amendment of the law in 1925.

14. As a class, mothers show no sort of anxiety for consummation of marriage before the age of 14. Even after 14, and I may say up to the age of 16, their anxiety for consummation is only a sort of symptom, that is to say, omission of consummation would be regarded as a sign of neglect on the part of the husband.

15. I have no knowledge in this matter.

16. This also is a question for medical men and jurists to answer.

17. I would put extra-marital and marital offences in two different categories as they arise from entirely different causes. For marital offences, I would prescribe deterrent punishment only to protect a girl from violent physical consequences. Beyond this, I think, provisions of the law would be ineffective, and if it is considered desirable to protect girls against consummation up to a certain age beyond the age of puberty, it is necessary to penalise marriage itself. For extra-marital relations, I would put as I have indicated in answers to previous questions a fairly high limit and a deterrent sentence of all persons concerned.

18. This question can best be answered by a lawyer.

19. This also seems to be a proper question for lawyers to answer.

20. I think fixing a higher age of consent for marital cases would be altogether ineffective. As I have already said, if it is desired to raise the age of consummation in marital cases also, marriage before the prescribed age should be penalised. This would not, however, be in consonance with public opinion. The bulk of public opinion would be in favour of putting certain social disabilities on a prematurely married couple, e.g., admission to schools, or public service.

21. So far as marital cases are concerned, I think conditions prevailing in Northern India would justify reliance on the gradual effect of education and social propaganda. For extra-marital cases, as I have already indicated, the law requires strengthening not merely so far as the raising of the age is concerned, but also in all persons concerned being made punishable.

***Oral Evidence of Mr. JAGAT PRASAD, Accountant General, Posts and Telegraphs, Simla.**

(Simla, 6th September 1923.)

Pandit Kankaiya Lal: We thank you for the valuable note you have sent. There are, however, some points about which we require further information.

Q. You have said that the age of consent in marital cases ought to be higher. At the same time you say that any provision of the law in this matter would be ineffective beyond saving immature girls from immediate physical consequences of a violent character. Shall I take it to mean that you are in favour of an advance in the age in order to protect girls from physical consequences of a violent character?

A. Yes, if necessary. I think 13 is high enough for that purpose. I consider a provision of the law necessary to that extent.

Q. Beyond that you think the raising of the age would not be effective?

A. No, because cases would not come to notice. Of course, I consider it desirable to raise the age of consummation.

Q. How much?

A. At least to 15.

Q. Do you mean that any age lower than 15 may involve immediate serious physical consequences?

A. I do not think so.* My experience is that ordinarily it does not lead to any immediate consequences. It may lead to gradual consequences but I can only talk about it as a layman.

Q. To obviate those consequences will it not be beneficial in the public interest if we put the age limit for consent at 15 within the marital state?

A. I think it will be ineffective. The only remedy is to raise the marriageable age.

Q. It would be beneficial, if it could be effective?

A. Yes.

Q. Why do you say it would be ineffective?

A. Because these cases do not come to notice.

Q. The object of legislation is to deter people by fear of punishment. Would that not reduce the possibility of marriages being held before the proper age?

A. If the chances of detection are remote, then it would not be deterrent.

Q. But there are possibilities of detection.

A. That does not matter. Unless there is something more definite than the medical evidence for instance about age the proof of which involves so much trouble, I think it would not be worth while by itself. The cases that will come to light will be so few that they will not act as a deterrent.

Q. As it is, cases are cropping up when the age limit is 13, though they are few. Is there any reason to think that they would not crop up, though not very largely, if we raise it further to 14 or 15, whatever you might suggest?

A. The probability will be meagre beyond 13.

Q. Is there any way of making the present law in this direction more effective?

A. The remedy seems to be to raise the marriageable age.

Q. You say that the raising of the marriageable age will not be in consonance with public opinion. If so, how will you meet that difficulty?

A. Orthodox opinion in Northern India is not affected seriously, but apart from orthodox opinion even people who consider it desirable that the age should be higher, do not favour that law should intervene in this matter.

Q. Would not orthodox people take serious objection to the raising of the marriageable age?

A. Not on religious grounds at any rate.

Q. On grounds of custom.

A. I do not think the objection will be very serious.

Q. You have further stated in your evidence that some parents are anxious to settle down a girl in life early enough and therefore they will be very much opposed to a law fixing an age for marriage?

A. Yes, of course some of them may not like it, but I do not think the objection will be very strong, because public opinion has advanced in this respect.

Q. If the parents or guardians desirous of settling a girl in their life-time defy the law and take the risk of punishment, would not the result be that the marriage will be celebrated and consummation will follow unless we have a law which prohibits the consummation of the marriage before a certain age?

A. My point is that the law would be ineffective after marriage.

Q. Even if you raise the age of consent?

A. Unless we have both, it would be ineffective. If the man defies the marriage law that may be detected; but the other thing is very difficult to prove.

Q. In view of these difficulties how would you make the law effective?

A. I do not think it is very necessary to raise the age within marital relation.

Q. Is it the mere fear that the law may not be sufficiently effective that prevents you from making the necessary provision?

A. Yes, the law will be inoperative.

Q. Public opinion requires the support of the legislature at times?

A. Public opinion does not require any stimulus in this direction.

Q. And yet you tell us that the law, if it is enacted, would be ineffective?

A. If public opinion were strong then all these cases would be exposed. Public opinion in India is not so intensive as to expose such cases.

Q. If we have legislation will it not have the effect of strengthening such men as are in favour of postponing consummation till after the proper age has been reached and deterring others who are not of that opinion.

A. Apart from the question of cases being brought to light and punished, it will only be a moral factor.

Q. It would be of some value?

A. Yes.

Q. As regards the public opinion are you speaking of the educated classes or of the rural classes also?

A. Both. My experience is that even in villages among uneducated classes the feeling is growing that it is not desirable to marry their children early.

Q. Has it become so intense as to dispense with the necessity of legislation or is it in a state of growth?

A. I think it is still growing.

Chairman: Do you mean that it will have a moral and educative effect but not a deterrent effect inasmuch as these cases will not come to light?

A. Yes.

Pandit Kanhaiya Lal: We are told that in certain parts of the country including the hill tracts of Simla consummation or intercourse before puberty is very common and the result has been very grave injury to the girl and to the physical and general well-being of the people. If that is the state of things would you still say that public opinion has advanced sufficiently to dispense with the necessity of legislation?

A. These tracts are exceptions. It is desirable to fix a higher age limit, that is a limit suggested by medical opinion, to prevent immediate consequences of an undesirable character.

Q. Are there not still certain castes and communities among whom there is a very great desire to have early offspring by way of grandchildren?

A. I do not know of any in the United Provinces and the Punjab.

Q. If you find that such cases do occur would you not like to take steps for the protection of girls on the lines suggested?

A. If that is the case, I would be in favour of what I stated, but the law would not be operative in these cases. That is an argument against raising the age. If you cannot make 13 effective, it would be more difficult for 14 or 15 to be made effective.

Q. If you find that cases of infringement have been brought to light and tried by the courts, as has recently happened in the United Provinces and the Punjab, would you still say that legislation is not necessary or that it would be ineffective?

A. It is an argument which cuts both ways. If the cases are very frequent which come to light, that would mean that even the present age is considered too high by the people for practical purposes, and if the cases are very few, that might be an argument for advancing the age.

Q. Cases may not be very many but cases there are.

A. They are not brought to court in the interests of the girl. Those are probably due to some sort of unpleasantness between the parents or due to vindictiveness.

Q. If the medical opinion suggests a higher age than 13 to prevent possible injurious consequences to the girl and her progeny, would you not take some action?

A. Not that it would be undesirable but that it would not be effective.

Q. But the law has not been wholly ineffective hitherto?

A. Because the age is suitable.

Q. Probably you are aware that marriages take place at times between middle aged men or old men who have lost their wives and young girls. Are not serious dangers involved in such cases when husbands try to expedite the consummation of the marriage even if the girl is not fit for it?

A. I would penalise these cases.

Q. In what way?

A. Of course, I will have some law for these cases. I would fix the difference between the ages of the two. I have some cases of this nature in view. In fairness to these persons, I may mention that they try to get a grown up girl as far as possible. Generally there is some money made in these transactions by the girl's parents. The older the girl, the more the price is paid.

Q. If they do not get older girls, would they not get any girl available and try to expedite the consummation?

A. Yes.

Q. In order to prevent cases of this nature would you not make a provision in the law?

A. I would provide law in other cases also, if I believed that it would be operative. We ought to have a law which will fix the minimum difference between the ages of the husband and wife to prevent such cases and a minimum age for marriage.

Q. If that law does not commend itself to the people or to the legislature, would you in that event recommend the fixation of a minimum age for consent in marital cases?

A. I said my objection as to the provision of the law is not because the object is undesirable. I consider it desirable that the age should be higher, I consider it desirable that some measures should be adopted to raise it as far as possible; and if I object to the provision of the law, it is only because it is not expected to be operative in that these cases do not come to light.

Mrs. Brijlal Nehru: What would you do to stop marriages between grown up men and young girls?

A. I would raise the age for marriage. If the law is broken and somebody faces the penalty he will become a marked man and you can see that the consummation does not take place earlier.

Pandit Kanhaiya Lal: You say that after the age of 15 consummation by itself does not do any physical harm to a girl. Do you mean that before the age of 15 there is a danger of physical injury?

A. I do think so.

Q. In that case would you not like to supplement the law fixing the age for marriage by another law fixing the age of consent in marital cases?

A. It depends on where you put the age for marriage.

Q. If you put the marriage at 15 years?

A. The law would not be necessary.

Q. But the law fixing the age of consent will support the other law?

A. Yes.

Q. You have pointed out that one of the evils of early marriage and early consummation is that the general tone of the health of the girls is lowered and they are deprived of energy and spirit of enterprise, for intellectual occupation and keen social enjoyment of other kinds. Is it your idea that by reason of early marriage and early consummation that is before the age of 15 the sexual instinct is in danger of being more developed than the moral and intellectual parts of the individual?

A. I believe so. If you want to prevent that, you will have to raise the age very much higher. You will have to put it at 18 or 19 years.

Q. Do you think the country is prepared for it?

A. The country is only prepared up to 15 and I think there will be no serious opposition up to 15.

Q. Can you suggest any way of improving the system of registration of births.

A. I have not considered this question. But I do not consider registration by municipalities very reliable, because I know people generally obtain false certificates when necessary. Registration is generally in the hands of underlings and people can get false certificates and extracts from some document or other. No responsible person verifies it.

Q. Would you be in favour of registration of marriages also so as to provide proof of the age of the bride and the bridegroom, and other particulars?

A. I do not consider registration necessary. It will only give the age as stated by the parents.

Q. But it will be at a time there is no dispute about the age, i.e., at the time of the marriage itself.

Chairman: But even then if the parents want to marry a small girl, they will say that the girl is 13 or 14.

Q. The advantage is that we shall have in the first place a register in which the birth is recorded and in the second place many years later a register in which the marriage is recorded with the necessary particulars as to the age and other things.

A. It will be very difficult to make the record sufficiently reliable for legal purposes. In villages especially you will not have a sufficiently reliable register.

Q. If you get the priests who celebrate the marriage to maintain a register, and also issue at the same time a certificate of the marriage, would it not simplify the proposition?

A. That will probably be as unreliable, because the priests are as unreliable, as any other class of people.

Q. What will be their motive in preparing incorrect registers?

A. They may prepare the registers correctly, but when necessary they may forge whole registers or make false entries.

Q. Suppose the registration is made by Sub-Registrars or Sub-Inspectors of Police or some other responsible official and certificates are issued at the same time, would it not be a safeguard against improper entries?

A. Sub-Registrars will do better, no doubt, but it will be a hardship in the case of the rural population to go to distant places to register marriages.

Q. There are Tahsildars and Sub-Registrars in every Tahsil, and people go to the tahsil frequently for several purposes.

A. Supposing they fail to register the marriage or birth what will be the penalty?

Q. There will be a certain penalty provided. It may be fine or anything.

A. I am afraid I have never considered this question.

* Q. Would you make an offence against the law of consent in marital cases cognisable by the Police, or would you require that the complaint should be filed by the parents or relations of the girl?

A. I would certainly suggest that the complaint should be made by parents or guardians. It is of course useless to expect the girl to put in the complaint.

Q. Would you say that the complaint would not be cognisable unless it was filed by the guardian or relations of the girl?

A. Yes, I should think so.

Q. Not of the boy?

A. The boy will not come forward to complain, but the boy's relations may sometimes be actuated by ill-feeling. I would therefore leave it in the hands of the girl's parents.

Q. You will not agree to the complaint being made cognisable by the Police?

A. I will not, because I have no confidence in the Police.

Q. Would you impose fine and imprisonment or only fine or only imprisonment as penalty in such cases?

A. For cases under 13 I would give fine and imprisonment and for cases between 13 and 15 I would leave it at fine only.

Q. About non-marital cases you have said that the age should not be lower than 16 but might be 18. Would you prefer 18?

A. Yes, certainly.

Q. If the girls are grown up to 17 or 18 and consent, would not there be a danger of hardship to the boys?

A. You mean that boys may sometimes be the victims. But this can be prevented by some other method, for instance fixing a difference between the ages of the boy and the girl.

Q. In the case of kidnapping and abduction the age limit fixed by the legislature is 16. Would it not be unsafe to fix a higher limit, in cases of rape?

A. I would make it higher in all cases. Cases where boys were victims are rather rare. Generally the boy will be older than the girl. However, to cover this case, it will be desirable to put in a provision about the difference in age between the boy and the girl.

Q. Do you think that the country is prepared to accept an age limit of 18 for extra-marital cases?

A. Outside particular classes there would not be any serious opposition to this measure; I mean outside the professional classes who think that it is legitimate to make money out of it. Outside this circle, there would not be serious opposition.

Khan Bahadur Mahbub Mian Imam Baksh Kadri: (There is one additional argument for fixing the minimum age limit much older.) Is 18 the age at which girls can be supposed to give an intelligent consent with due realisation of the consequences?

A. Yes.

Q. Taking this into consideration, you think that 18 should be the minimum age in extra-marital relations?

A. I think so.

Mrs. Brij Lal Nehru: In your answer to our questionnaire, you say that there are 'some earnest social thinkers who consider the law inadequate'. Can you tell me which aspect of the present law they consider inadequate? Do they consider the punishment to be inadequate?

A. No, the age; they do not consider it sufficiently high. They want the age to be higher. There is no such feeling about the punishment; but as a matter of fact, they would exclude imprisonment as a punishment altogether and keep only the fine. That is in the intra-marital cases. Extra-marital cases would remain as they are.

Q. When you say that you are against raising the age in the intra-marital cases, is your objection only because of its being ineffective?

A. Yes. I consider that the age of marriage should be higher.

Q. What do you think is the cause of the ineffectiveness of the law so far?

A. People will not go to court and give evidence against each other.

Q. If you think that public opinion is sufficiently advanced to take objection to early consummation, then what is the cause of their not doing so?

A. Public opinion in India is seldom so intense as to haul up people who infringe the law.

Q. If punishment is reduced to fine as you suggest will there be any difference?

A. It will not make any difference.

Q. Do you think people are reluctant to bring these cases to court because they do not want to give publicity to these matters or because of the fear of high and drastic punishment provided?

A. It is the publicity, the punishment, the scandal, etc. Decent people will not have anything to do with it.

Q. If the hand of police is eliminated therefrom do you think more cases of that sort will come to court?

A. The police should not investigate until the parties concerned have lodged the complaint.

Q. Supposing the girl's parents prosecuted and the police had nothing to do with it, do you think it would be more effective?

A. But the police will not take up these cases except in extra-marital cases and when the consequences are violent.

Q. Will the trial of cases in camera facilitate matters?

A. Even then I do not think that more cases will come to court.

Q. Will summary trial make any difference; i.e., if the long procedure is given up?

A. From their very nature the cases are likely to be kept secret.

Q. If recognised bodies of social reformers are given the power to complain and prosecute, do you think it will be effective?

A. That will probably have a better chance.

Q. Now in paragraph 17 you mention deterrent punishment. What do you mean by that?

A. The sort of punishment that is provided now, that is, fine and imprisonment. For intra-marital purposes the present law will suffice. If the age of 13 is considered too low by medical opinion to obviate violent physical consequences I would raise the age, and make the punishment even in intra-marital cases heavier up to the age indicated.

Q. In case, you think that there is some prospect of the law being effective if the prosecutions are launched by social reform bodies, should the age of consent within marital relations be increased?

A. Yes.

Q. Do you think that the public will generally take it in good grace and that they will not go against it?

A. Of course, they are bound to resent it. In our country the orthodox section form the larger part and the social reformers are in a minority. But even then the reformers are gradually achieving their object, and till now they have been able to take the orthodox people with them. So far as this measure is concerned, there will be opposition from the orthodox people even when they are in sympathy with the measure.

Q. In paragraph 21 you say that in the extra-marital cases the persons concerned should be punished. What do you mean by persons concerned?

A. I mean the people for whom girls are procured.

Q. You mean to say that the age of consent should be raised to the level now fixed for kidnapping and seduction?

A. I have suggested 18.

Mrs. M. O'Brien Beadon: In paragraph 20 you say that public opinion would be in favour of putting certain social disabilities on a prematurely married couple. Do you think they will be in favour?

A. Yes, they will be in favour. From the bulk of the people there will not be any serious objection.

Q. What about the stories you hear about our hostels? Do you not think that in the circumstances it is desirable not to prevent marriage at all? How do you think we can get over that? Will not marriage reduce the chances?

A. These troubles will be there in any case, whether the boys are married or not. At present most of the boys are married and they are not strictly moral. It will not make any difference.

Q. You say that the vivacity of the unmarried as compared with the married girl is markedly greater. Is it because that a girl is married that the vivacity is less or is it because she has brought forth 3 or 4 children?

A. It is the children that make the difference.

Written Statement, dated the 3rd August 1928, of Dr. (Miss) A. C. SCOTT, Chief Medical Officer, Women's Medical Service, Secretary, Countess of Dufferin's Fund, Simla.

1. I am not in a position to judge.

2. The circumstance which justifies making an advance in the law is in my opinion the prevalence of the social evil of child marriage, and that re-marriage of widows is, in many communities, forbidden, thus leading to the abhorrent custom of marriage between adult and middle-aged men with young immature girls.

3—4. I am not in a position to judge.

5. From an enquiry I made some 12 years ago under the Indian Research Fund Association, I found the average age at which girls attained puberty in Northern India was 14·07 years. This did not markedly differ in different castes, communities or classes of society.

6. (1) Yes, among Hindus. In the enquiry above mentioned I found the average age of consummation of marriage was 13·2 years.

(2) Yes, especially among Hindus, parents of girls married in childhood look upon the onset of puberty as the sign that the girl is ripe for marriage and she is allowed to go to her father-in-law's house after the first period.

(3) Yes. I do not know if any of these cases come to Court.

7—8. I am not in a position to know.

9. No. About 17 or at least 3 years after puberty.

10. About 14 years of age.

11. Yes, several cases when in charge of a hospital in Delhi the bridegroom being in all cases over 30 years of age, the bride's age was usually about 12. One case was a child of 10 years, the mental condition of the child was one of terror almost approaching insanity. The physical injuries were in some cases severe. No case was brought to Hospital in which there had not been fairly severe haemorrhage, it was this last which frightened the mother-in-law and led her to bring the child to Hospital.

12. Yes, for high infantile mortality certainly and for maternal morbidity rather than mortality, the other results vitally affecting (a) the intellectual, (b) physical progress of the people are—

(a) (1) Low standard of education possible or none at all.

(2) Loss of childhood, its pleasures and healthy companionship and competition.

(3) Moral development vitiated, the sex instinct is developed out of all proportion to other equally important ones and dominates the mind of the child to the exclusion of normal healthy lines of thought.

(b) *Physical*. In my experience much of the defective physical development, the high degree of morbidity in women of child bearing age and in children from birth upwards is due to early maternity. Children uneducated and immature become mothers when they ought to be at school. Their children, if they survive, suffer from the ignorance of the parents and fail to develop into useful healthy citizens.

13—14. I am not in a position to know.

15. Yes, great difficulty. I would suggest that (1) a much more efficient method of birth certification be introduced and enforced than at present obtains. Also improved access to birth-registers, also (2) that X-Ray departments be made accessible for examination of these cases. Also (3) that Medical students be more carefully trained in Medicolegal work on these births.

16. I fear not unless to 16 or 17.

17. No, the punishment should be, in my opinion, deterrent such as flogging.

18—19. I am not in a position to give an opinion.

20. No. I think legislation fixing the minimum age of marriage will be more effective and I think public opinion among the classes I know is anxiously waiting for this to be raised.

21. On both. Among educated classes the progress of social reform will certainly go on, but even these are tied and bound by custom and laws of caste, etc., which they find impossible to break through without the help of penal laws. Strengthening the penal laws will assist and will touch the backward classes as nothing else will.

***Oral Evidence of Dr. (Miss) A. C. SCOTT, Chief Medical Officer, Women's Medical Service, Secretary, Countess of Dufferin's Fund, Simla.**

(Simla, 6th September, 1928.)

Chairman: How long have you been Chief Medical Officer in this service?

A. As C. M. O. in the Women's Medical Service for 4½ years.

Q. Which is your headquarters?

A. Simla and Delhi. I tour the whole of India.

Q. Where were you before that?

A. Before that I was for nearly 6 years Assistant to the Inspector General of Civil Hospitals in the Punjab.

Q. Is your experience confined to these 4½ years or is it more?

A. For fifteen years I was in charge of medical work in Women's Hospitals in the Punjab and Delhi.

Q. So you have practically about 20 to 25 years' experience?

A. I have had 25½ years' experience.

Q. During those first fifteen years how many cases of injury you think you have noticed?

A. Not a large number; five or six as far as I can remember, during the whole time.

Q. Were they cases of gross injury?

A. Yes, gross injury. As I have stated in my written reply the symptoms that brought those children under my care was hæmorrhage. I feel that if there had not been that hæmorrhage, there would not have been so many cases brought to me.

Q. It was hæmorrhage that frightened the people?

A. Yes.

Dr. Beadon: Apart from the violent injuries have you noticed any cases where physical deterioration was actually due to early marriage?

A. Yes, I certainly have noticed many cases. Many girl mothers have come to me in the dispensary both before and after child birth whose mental condition was not normal.

Q. But that may be due to physical exhaustion or sexual excitement before marriage.

A. But comparing it with children of the same age who ought to be in the school and playing about, the difference was very marked.

Q. By mental abnormality do you mean mania or anything so violent or a sort of mental apathy?

A. No, the case I have mentioned was an exceptional case.

Q. Do you consider that a very marked degree of hysteria can be associated with sexual excitement?

A. I certainly should think so.

Q. In your opinion then hysteria is really partly the result of sexual excitement.

A. Yes.

Chairman: If there is a large number of marriages and unions before the prescribed age would you expect mortality of children in that proportion?

A. Yes.

Mrs. Nehru: Would you kindly tell us something about the Indian Research Fund Association mentioned in your memorandum?

A. The Association works under the Commissioner of Public Health to the Government of India and the money is voted by the Assembly for research work in India and is distributed to the various centres where research work is being done. One is at Kasauli and the other is at Calcutta and one other is at Parel.

Q. I want to know the object of that Association.

A. It is doing research work in diseases in India, Malaria, Leprosy, Tuberculosis, Dysentery. All these different tropical diseases are investigated by this Association.

Q. In answer to Question No. 6 you say that consummation of marriage takes place very early among the Hindus. Do you base it on your general

experience of the medical cases or statistics or on the 'research work done under that Association?

A. The figure was given after the enquiry I made under the Research Fund Association. I made an enquiry as to what age the girl went to her father-in-law's house. That is what is called *Muklawa*. I consider that marriage is consummated at that time.

Q. In the case that you have mentioned in your statement in answer to question No. 11, how old was the girl at that time?

A. I think, she was 10 or 11.

Q. You speak about the registration of births, would you make any suggestions as how to make it efficient?

A. I do not think I can answer that question. It is a very difficult question. The method is very haphazard in this country. In the villages, the *Chowkidar* is the person who goes to the Thana and gives the number of births in the village and the approximate dates on which those births have taken place. In the cities as far as I can make out, it is the sweeper women or the dais who register the births and of course that again is a very unreliable source of information. I think the father of the child should be made to register the birth of the child.

Q. If a column is provided for the name of the child, will it make any difference?

A. I don't think so.

Mr. *Mudaliyar*: Do you consider that the physical condition of the hill people is better than the people of the plains, generally speaking?

A. I have not worked in the hills as a doctor. I have only worked as an administrator up here. Therefore I have not any experience of hill people.

Q. You said hysteria was a common symptom. Is it the result of early consummation of marriage or is it only the result of sexual excitement?

A. I think that the mental condition which produces hysteria is also produced by the sexual excitement which is prevalent among young people in this country. They talk of marriage in their houses. There is always some talk of the approaching marriage either of her own or somebody else's. There is a great deal of talk that is unsuitable for children to listen to. That excites their sexual desires and that produces hysteria.

Q. You say X-Ray departments should be made accessible for the examination of cases regarding the determination of age. Is it not done now?

A. There are a few X-Ray departments in India and one of the great tests of age is whether the growing ends of bones have joined with the rest of the bones and that really is not completed till 18.

Q. Then the X-Ray examination will be useful for determining the age of a girl.

A. Yes.

Pt. *Kanhaiya Lal*: You are in favour of raising the age of consent. What age would you suggest in marital cases?

A. I would make no distinction between marital and extra-marital cases.

Q. What age would you fix for both then?

A. I would fix 14 to start with. Later on as public opinion gets more formed, it can be raised again. But I do not think it is any use raising it more than 14 at present.

Q. You have said that the growing ends of the bones do not join till about the age of 18. If so, will there not be serious danger in fixing the age at 14 both to the girl and her progeny?

4. I don't think you could enforce a higher age in this country. I think as public opinion grows and the people realise what harm is done to girls who become mothers at such an early age they will gradually refuse to marry their daughters before the age of 17 or three years after puberty; and a year after it may be assumed they will have their first child.

Q. What difficulty do you anticipate in enforcing the higher age-limit in extra-marital cases?

A. Well, I don't see how it could be enforced.

Q. The only question is one of consent and if we fix a high age of consent, the difficulty disappears, as consent becomes immaterial. Will there be any harm there in fixing the higher age-limit?

A. I don't think it is any good fixing it higher than 14 or 15. The higher the better. The question is, is the country ripe for it?

Q. Don't you think a higher age would raise the morals of the country?

A. I think it would.

Q. Would it not have a beneficial effect on the general population, if we protect the girls by raising the age-limit say to 16 or 18 years against strangers?

A. Yes, I think, it would.

Q. Will it not protect the girl also from injurious consequences?

A. That follows.

Q. You have said that the age of consent for marital cases should not be fixed at higher than 14 for the present.

A. I have advised that the age of marriage should be three years after puberty. That is a much healthier time.

Q. That would be much higher than 14.

A. Yes, it will be about 17.

Q. Would you like that the age of marriage and consummation should be 17 in order to save the girl from all possible injurious consequences?

A. Well, I don't think it is practicable. That is why I do not advise it.

Q. Fixing a higher age of marriage may give rise to a great deal of opposition, but fixing a higher age of consent may not meet with the same amount of opposition.

A. I should think so. But these are questions that are really the concern more of the people of the country than me.

Q. Are you prepared to recommend the age of consent for marital cases being fixed at 15 or 16?

A. I prefer the age 14 at present.

Q. Although you fear that there may be evil consequences resulting from fixing the age so low?

A. Well, we are at present getting mothers at 13, whereas if it is raised to 14, we should certainly not get mothers before 15.

Q. But there is an inherent objection to the age-limit being altered from time to time that is very frequently. How would you meet that objection?

A. I cannot answer.

Q. You are in favour of fixing the minimum age for marriages.

A. Yes, that would add more to the welfare of the country than fixing the age of consent.

Q. You have said that strengthening the penal laws will assist and teach the backward classes as nothing else will. Would you in that view put the age of consent limit higher than the age for marriage?

A. No, I don't think so. The same age would do.

Written Statement, dated the 17th August 1928, of Rani AMRIT KAUR of Mandi, Simla.

1. Indian Penal Code applies and there is no apparent dissatisfaction with the law relating to the age of consent as contained in Sections 375 and 376 of I. P. C.
2. Age of consent should be raised as girls do not develop sufficient understanding at the age of 14.
3. There are not many cases of rape, but offences under 363 to 366 are pretty common. The amendment of Law made no perceptible difference.
4. Sufficient data is not available to give any definite opinion, but the Child Marriage Prevention Act recently passed will prove effective.
5. The age of puberty differs with locality and climate. In the hills a girl matures about the age of 16, but in plains about the age of 14.
6. No cases have come to courts therefore it is difficult to say whether cohabitation before or soon after puberty is common or not.
7. There is no religious injunction enjoining the consummation of marriage before or at puberty, but the orthodox Hindus do believe that a girl should be married at the first sign of puberty.
8. Gaona ceremony (if it means the bringing of the bride and bridegroom together for consummation of marriage) is performed at the time of the marriage, but when the bride and bridegroom are not sufficiently developed it is merely a formal ceremony.
9. Puberty is not always an unfailing sign of physical maturity. 18 years is the lowest age at which consummation of marriage is not likely to cause any injury either to the girl or her progeny.
10. Not before 18.
11. Public opinion is not articulate.
12. It is very difficult to be definite, but Hindu mothers are generally anxious to be grand-mothers as early as possible.
13. No cases have come to courts.
14. Difficulty or margin of error is bound to be reduced or minimised if the age of consent is raised considerably above 14.
15. It would be much better if extra-marital and marital offences are separated.
16. I would not make the marital offence a cognisable one and would prefer the proceedings to be in camera.
17. Limit of compensation under Section 250, Criminal Procedure Code, may be increased to Rs. 500 to ensure that false vexatious or frivolous complaints are not lodged.
18. Fixing of minimum age of marriage is perhaps the least and most effective weapon.
19. Both.

***Oral Evidence of Rani AMRIT KAUR of Mandi.**

(Simla, 6th September, 1928.)

Chairman: You are the Chairman of the Child Marriage Abolition League.

A. Yes.

Q. Where are the headquarters of the League?

A. Delhi.

Q. May I know how many persons are members of that League at present?

A. About fifty.

Q. How long has the League been in existence?

A. Since February last.

Q. Is your experience with regard to the Age of Consent confined to your own State or extends to any part of the British territory also?

A. Well, certainly I am directly concerned with my own State. I have not had any chance of getting in touch with British territory.

Q. Have you got any hill-tribes in your State who have got their counterpart here in the Simla hills?

A. Yes, there are some.

Q. Would you be able to say if there is a lot of barrenness or sterility among hill women in your part of the country?

A. No, not in our part.

Q. Is child-marriage prevalent among the hill-tribes?

A. Yes.

Q. Do I take that child-marriage means below 12 or below 13?

A. Yes, below 12 and even 5 or 6.

Q. You have said there is no apparent dissatisfaction with the Age of Consent law as contained in sections 375 and 376, I. P. C. Are the people content with that?

A. They are content.

Q. Do you think that the people are aware of the law?

A. Yes.

Q. What is the Age of Consent in your State?

A. 13 for girls and 18 for boys.

Q. Is that the age of marriage or Age of Consent?

A. Age of marriage. For a female, whether a maiden or a widow, the age is 13.

Q. In answer to question No. 16 you have said that the difficulty or margin of error is bound to be reduced or minimised, if the Age of Consent is raised considerably above 14. How far would you raise it?

A. I should say 16.

Q. Then in your answer to question No. 20, you have said that the fixing of the minimum age of marriage is perhaps the best and most effective weapon. Why do you think so?

A. I am speaking from the point of view of the State.

Q. Even from the point of view of the State why do you think that the Age of Consent will not do?

A. Because the people do not think for themselves. They are not educated. Therefore a definite age has to be fixed for them, they being more or less illiterate.

Dr. Beadon: In answer to question No. 5 you have said that in the hills a girl matures at about the age of 16, but in the plains at about the age of 14. But we have been told in some of the statements that girls in the hills develop the sexual instinct much before 16 and they are very immoral. Don't you find that?

A. That is not what I have found in our State. From the medical reports I have found just the contrary.

Q. You don't think there is much immorality.

A. Yes, in the Kulu District and not in Mandi territory. In the Kulu territory there is a great deal of immorality.

Q. Are your subjects Hindu?

A. Yes.

Q. You have said that the age of marriage is 13 and 18 for girls and boys respectively in your State. Has that long been in force?

A. That has been since March.

Q. Have you had any discontent or agitation?

A. On the contrary the last report has been most satisfactory. The people are satisfied and they are doing all they can in helping to go on. So that, we hope during the next three years to augment the age.

Chairman: You say they are satisfied, that is rather surprising.

A. Yes, it is. But you know, they are very loyal people and most of them are sentimental and they would do as their rulers do.

Mrs. Nehru: In your law there is a clause which allows people to take permission to marry their girls younger under special circumstances. Have there been many cases where people taken advantage of that clause?

A. I don't think so. It has not come to my notice.

Q. Do you think many marriages have taken place during these six months after the enactment of the law below the prescribed age?

A. I don't think. I shall have to get a report on that from the Judge.

Dr. Beadon: What is the population of your State?

A. 1½ lacs.

Mrs. Nehru: Can you tell us why you advise the separation of marital and extra-marital offences?

A. Don't you think it would be easier for the law?

Q. Do you think that it is unfair to have the same punishment for both?

A. Why not? I think there ought to be a separate arrangement in bringing them under the same clause.

Q. Don't you think that there should be heavier punishment in the case of extra-marital cases?

A. It all depends upon the offence.

Q. Do you think the law has been effective in your State?

A. I think so.

Q. You have spent a large part of your time in France. Can you tell us what is the state of the law as regards the Age of Consent there?

A. There the Age of Consent is 15.

Q. Are there very many cases of the breaches of the law that are brought to the Courts?

A. Well, according to Code Napoleon one can get married at 15. That is all what I can say.

Mr. Mudaliyar: Do you consider the physical condition of the hill-tribes fairly satisfactory as compared with the plains' people.

A. From what point of view?

Q. Generally speaking, from the point of view of their stature, robustness, energy, and vitality.

A. Plains people are stronger and that for the simple reason that Tuberculosis is very prevalent in the hills.

Q. Would you classify the extra-marital and marital offences under two different categories? Would you call marital offences, rape, or do you think it would be monstrous to call them rape?

A. I would put them under two different categories.

Q. What is to be the punishment for marriage below the legal minimum age? Is it imprisonment?

A. Imprisonment for a term not exceeding 3 months or fine not exceeding Rs. 250. If the contracting party is a minor, the father or guardian is liable.

Q. Is the priest liable?

A. No.

Pandit Kanhaiya Lal: You are in favour of raising the Age of Consent, what age would you fix for marital cases.

A. 16.

Q. Do you recommend 16 for the people of British India or for the people of your State only?

A. In general.

Q. What age would you recommend for extra-marital cases?

A. 18.

Q. You have said in your opinion that 18 years is the lowest age at which consummation of marriage is not likely to cause any injury either to the girl or her progeny, and yet you tell us that so far as marital cases are concerned the age might be fixed at 16. Can you tell us why you fix a lower age for marital cases?

A. It depends on the individual.

Q. But the law applies to all individuals. From your answer to question No. 9 it follows that below 18 there is a danger of injury to the girl or her progeny.

A. There is the possibility of injury at any age.

Q. But you say that 18 is the lowest age, at which consummation of marriage is not likely to cause any injury either to the girl or her progeny?

A. No, I think since answering that question, I would put the age at 16.

Q. If you keep the minimum age of marriage at 13 in your State, and a higher age in British territory, is there not a danger of people going from one territory to another to defy the law and thus go unpunished?

A. We have not experienced that yet, but if the difficulty arises what will be done, most probably, is that the State and the British Government will co-operate and bring the law into line.

Q. In answer to question No. 14 you have said that Hindu mothers are generally anxious to be grand-mothers as early as possible.

A. Yes, that is true.

Q. In view of that fact and the belief of orthodox Hindus that a girl should be married at the first sign of puberty, as stated in your answer to question No. 7, don't you think that there will be great opposition, if the Age of Consent is fixed at 16?

A. No, of course don't rush the Age of Consent immediately. Let that gradually, go by steps, educate the people to the idea that this level is not going to remain for ever.

Q. What is the age, you would now propose to fix for marital cases?

A. 14. Then take it up gradually till you get to the age you want. In the present state, I think, it is useless to put it at 16. As public opinion advances, advance with it.

Q. But so far as extra-marital cases are concerned you are definitely of opinion that you must start with the higher age limit of 18?

A. Yes.

Q. Are you in favour of both marriage legislation and a penal legislation for fixing the minimum Age of Consent?

A. Yes.

Q. I should like to know what steps have been taken by your State regarding the registration of births. Have you got *Chowkidars* who register the births?

A. Yes.

Q. Do you think that the system is working satisfactorily?

A. It is rather early to give an opinion.

Q. Well, the system must have been in force for years.

A. But it has not been satisfactory. The old-fashioned law could be hoodwinked by anybody. But according to this Act and according to the new rule that is laid down, I should say, if the official do their duty properly, it should be most effective.

Q. Well, suppose we require the registering authority to issue a certificate to the person reporting the birth, so that there would be two records, one in the possession of the reporting individual and the other in the possession of the registering authority to prevent any alteration or manipulation, do you think it will be advantageous?

A. It would be advantageous.

Q. What do you think of the proposal that has been made to us from time to time by different persons that marriages should also be registered?

A. That I think is rather complicated. What is there to prevent the parties giving a wrong age?

Q. There will be two records, one made at the time of birth and the other at the time of marriage. We can always check one with the other. And if a certificate is also issued to the parties concerned giving the necessary particulars, would it not be of help when questions of age arise afterwards?

A. No. It will lead to endless complications. Because it is a very complicated thing to find out how old she actually was when she was married.

Q. Then you will be satisfied with registration at the time of birth?

A. Yes.

Q. Would you add the name in the birth register?

A. Yes, that would be the only way to check.

Q. But among the Hindus names are not given till some time afterwards and we shall require another report to supplement the first giving the name of the child.

A. Yes. Why not specify the time that the name must be given after so many days.

Q. Supposing the names are altered afterwards or the child dies, and questions of identity may arise.

A. Therefore it means a child will have to be named directly it is born.

Q. But that would not be in accordance with Hindu custom or practice?

A. If you are going to take that into consideration you will have to change the Hindu custom.

Q. You have said that you would make the offence in marital cases, non-cognisable, that is to say, you would not allow the police to take cognisance of such cases?

A. No.

Q. Who should be the person whom you would authorise to make a complaint in such cases?

A. The police are very corrupt in our part.

Q. But who should complain if the police are not to take up the case? It has been suggested that the only person who should be allowed to make a complaint should be guardian or a near relation of the girl or a representative of any social reform association in the locality.

A. That I agree to, specially the latter.

Q. And not the former one?

A. No, because parents would not make a report.

Q. Would you give them the right, if they are willing, to make a complaint?

A. Yes.

Q. You would give the right to the relations or guardians of the girl and also to a social reform society to make a complaint and no one else?

A. Yes.

**Written Statement, dated the 13th August 1928, of the Hon'ble Colonel
Nawab Sir UMAR HAYAT KHAN TIWANA, K.C.I.E., C.B.E.,
M.V.O., Member, Council of State.**

Before answering the questionnaire it is essential that I should begin with a few remarks governing my answers thereto. At the outset I may say that India is a continent and not a country and its climate differs more than that of Northern and Southern points of Europe. It is inevitable that climate must have its effects on the people. The condition of the people at Cape Comorin cannot be the same as those of the highlands of Himalayas. Thus to have a uniform law for the population of India would be a mistake and any member bringing in a legislation would see things from the point of view of his own part of the Province in which he has been brought up, which would not be safe for the general population of India.

The second point worth consideration is the environments and circumstances in which an individual is brought up. Any individual who gets a good nourishment in a well-to-do family, if not diseased, would develop bodily much quicker than the one who is brought up in a poverty-stricken family.

Thirdly any individual bred from young and healthy parents would be much stronger and would more develop in body than the one from weak parents may it be from infirmity or age, barring the cases when the progeny get diseased during the development owing to natural causes. Then again certain individuals who remain healthy throughout their life would develop much quicker than those who fall a prey to certain diseases during their period of maturity. There could be given many such illustrations where there will be vast difference in maturity of the two individuals brought up under different circumstances but nothing can deceive nature, and an individual who reaches puberty is fit for carrying on such duties for which nature has endowed it. Where such a thing happens to the wild animals the nature takes its course and in human beings no law can be effective however rigorous to fight against the nature. It is with the above in view that Mohammadan law-givers fixed the age limit to natural puberty in Arabia which is a point more or less equidistant from East and West, and as it is a religious law with the Mohammadans to interfere with it would be against the declared policy of Government in this connection as well as the nature. The interference with it would be tantamount to fighting against nature and would create a barrier against the natural law. By now many have read "Mother India" and the Books written against it and that shows there are exaggerated cases one way or the other and thus there is a necessity of *via media*. If the matter only concerns other than the Mohammadans I would not give my emphatic opinion but would like to say only for the good of the country as a whole. I can safely declare after seeing the countries in East and West that India's mortality stands much higher than the countries in the West and I would not like any deviations from old customs which some Westernised persons would like it to be who have been brought up in England and who cannot see the difference between India and England from Geographical and climatic point of view as well as the state of society prevailing there.

I will be willing to appear as witness before the Committee if it is desired.

1. Not very particular.
2. I think the present law is good enough and any advance to a higher degree would tend to abductions and crime in consequence.
3. No. The amended Law has made no appreciable effect on the people, most of them not knowing about the change in the law.
4. Generally speaking in my part of the country, such early marriages are never consummated among the Muhammadans and among the Hindus when such marriages are brought about there is no chance of such cases being reported owing to the present state of society.

5. The age of puberty as expressed in the foregoing remarks would differ among various classes but generally speaking it is between 12 and 14.

6. Generally it is not common and there are seldom cases brought in the courts unless there exists enmity among the parties.

7. The early consummation of marriage is only brought about when parents are old and want to see their children safely settled, but in Mohamadan population in the Punjab the parents being generally poor wait till they can get funds enough to bring about a marriage and when prolonged can tend, in some cases, to seduction and consequent quarrels and murders which continue for generations, but though the marriages can come off at any juncture, consummation should not be allowed before puberty, as all the religious injunctions are based on nature especially among Moham-madans.

8. The ceremony does not exist among the Mohammadans but among the Hindus it takes place after the marriage is performed when the parties have attained puberty and when the girl actually goes to live with her husband.

9. It is right in 90 per cent. of cases where puberty is attained in natural course but where sexual feelings are aggravated owing to environments it should not be considered as a rule and as these cases are in minority they should not be taken into account to govern most of the other cases.

10. I think a girl is generally competent to give an intelligent consent above 14 years of age in accordance with the above remarks.

11. I think it to be a well-known fact that if vitality of the parties is below normal there are chances of their falling an easy prey to various ailments and it may be taken as granted that seed in an unhealthy soil cannot thrive as it does in a healthy one; similarly a defective seed though in a good soil cannot thrive like the good one.

12. Yes, as if an undeveloped girl is taking nourishment in the way of food for her own development, when she has to rear a progeny inside her, both must suffer and make suffer the future generations connected with them.

13. None.

14. Only in few and extraordinary circumstances.

15. No. The birth is registered and so is inoculation for small pox and blunder could be committed only where two successive children of the same sex are recorded when one of them dies.

16. Generally saying it will reduce them if there are any.

17. No.

18. The procedure of the two must be separate altogether from each other.

19. There will be very few cases of this nature unless the parties were at loggerheads and when the cases are bound to be concocted and thus no notice should be taken of such extraordinary cases.

20. I think legislation fixing the higher Age of Consent will be more in consonance with the Mohammadan public opinion than that fixing the minimum age of marriage.

21. I think there is no need of strengthening the Penal Law as the society is far superior owing to circumstances of the country to the Penal Law which is very defective, as the social law has emerged from centuries in accordance with the requirements of the inhabitants concerned.

**Demi-official, dated the 26th September 1928, from the Hon'ble
Colonel Nawab Sir UMAR HAYAT KHAN TIWANA.**

I herewith send the corrected copy of my oral evidence and would like to make another suggestion which may be added to it. I quote the Quranic Text (By the name of God Almighty—"Tankihu hina ba izn-i-Ahl-i-hina")

which means "perform the *Nikah* with the permission of her parents or other Guardian". This applies to cases wherever an elopement or abduction is effected which leads to trouble nearly in every case. I would suggest that in such cases as the girl has got no help of her matured and elderly folk the whole responsibility lies on the girl herself, and therefore the age limit of consent may be raised to 18 years the highest limit fixed by the Imam Abu Hanifa. This may have beneficial effect on abductions and crime resulting therefrom and would thus be welcomed by Mohammadaus generally especially in the Punjab.

This should not affect the general marriages under Mohammadan Law where all parties concerned agree. This is more or less in consonance with the Christian law and custom in Europe where before courtship the parents or guardians are consulted or informed.

***Oral Evidence of the Hon'ble Colonel Nawab Sir UMAR HAYAT KHAN TIWANA, K.C.I.E., C.B.E., M.V.O., Member, Council of State.**

(Simla, 10th September 1928.)

I am now about 54 years of age, and have been 23 years in the Legislature. I have seen England, France, Italy, Switzerland, Egypt, Mesopotamia, Tibet, and most parts of India, as well as Africa. I have not gone to Japan or America, but I had been to Mesopotamia a part of Turkey.

Chairman: Which place do you come from, the Punjab or the North-West Frontier Province?

A. My home is in the Shapur District, in the Punjab. It is in the Rawalpindi Division, and is near the North-West Frontier Province. I have been a First Class Magistrate of over two decades' standing.

Q. Am I correct in saying that the general trend of your evidence is to the effect that there should be no legislation, but that puberty which is the natural test should be taken as good enough for the consummation of marriage?

A. Yes, because it is the Muhammadan Law and I being a Muhammadan would stick to that law. Also, I can say from my experience that that is the best test.

Q. Would you make puberty the test for marriage or the Age of Consent?

A. For the Age of Consent, of course. For marriage, there should be no legislation at all. I shall explain why. Now, in my part of the country feuds will arise in certain families because a girl has been taken away without her parents' consent, and these feuds will continue for generations unless some well-wisher or arbitrator came in and said "Now, put a stop to this trouble and let there be *Nikah* between the boy of the oppressed party and the girl of the offenders" and when that is done the two families would live in peace. The *Nikah* is performed so that later on the parents of the girl may not give her away to somebody else in marriage. That ends the quarrel.

Q. What is the Muhammadan Law on the subject? Does it lay down any rule about the age of marriage?

A. When the girl is a minor, whatever may be her age, her father can give her in marriage. That is the actual law. She may repudiate the marriage after she attains puberty. If the girl has not attained puberty, at the time of *Nikah* there is a Maulvi who says to the boy, "I give you this girl in marriage with the permission of her father", while if the girl has attained puberty, she says to the boy herself or through two persons who are sent to enquire from her, "I accept you as my husband", etc. But the girl can remain at her father's house even after the *Nikah* has been celebrated if she is a minor. She can, however, repudiate the marriage when she comes of age which is termed "*Khayar-ul-Baligh*". That is the Muhammadan Law.

Mrs. O'Brien Beadon: If the girl, when a mere child, is sent to live with her husband after the *Nikah* (and when she attains puberty she does not like him), can she repudiate the man on attaining puberty if she does not like him.

A. Yes, but if consummation of marriage has taken place, she cannot repudiate.

Chairman: Amongst Muhammadans do marriages as a rule take place before puberty?

A. I think only one in every 100 cases or even 500 cases or seldom. As I already stated these happen only in extraordinary circumstances. Generally girls are not married before puberty.

Q. What would be the general age of puberty for the Muhammadan girls in the Punjab?

A. Generally between 12 and 15; never after 16, she can be called a minor. One of our religious authorities says that if there is some defect and there is therefore no puberty till 16, it may be considered puberty.

Q. Now in our questionnaire in Question 12 we have referred to other results vitally affecting the intellectual or physical progress of the people. Then, if your test of puberty is taken as a practical view, do you think that there are any other results which are detrimental to the girl and her progeny that may be taken into consideration?

A. Mostly all our people are either Zamindars or labourers. They work in the fields and are seldom at home and are strong. Girls belonging to other than the Zamindar classes do not do any work and are therefore weak and consequently unfit for early consummation.

Q. You are thinking of physical effects only. We are thinking of other possibilities which come into play on account of early marriage and consummation. For instance, she cannot be educated as she becomes a woman before she can be sent to school. Supposing marriage and consummation take place before 13 the whole responsibility of the household may fall on her and she may not be able to do her share of the work.

A. But the results in the other case will be more disastrous. If the girl is not married, the danger is that she may be seduced away.

Q. Do you think that girls of 12 or 13 will be seduced away?

A. If you allow sufficient time to elapse after puberty and they are not taken care of, they might be seduced away.

Q. I take it you are talking of the labouring classes who have got no protection?

A. Yes; they have not sufficient protection, and the danger is there.

Mrs. O'Brien Beadon: Is the danger from the girl?

A. No, she is only liable to be tempted away. She is generally not the aggressor. If, say, a year or two passes after she attains puberty, there are more chances of her becoming a willing agent.

Q. Do you approve of the raising of the age to 16 against strangers as suggested in Dr. Gour's bill?

A. Against strangers I would. It can be 16, because from the legal point of view a girl under 16 is a minor.

Q. Within the marital state would you rather keep it at 13 and not at 14?

A. I would not mind 14 for consummation, but there should not be any restriction on the *Nikah*. It will be an interference with the Muhammadan law.

Q. Therefore there is no objection on your part to 14 and 16 respectively.

A. No; but prohibition of marriages (*Nikah*) I will not have.

Q. Does the Muhammadan Law say that marriages should be performed at or within a certain age?

A. There is no restriction whatever. A girl may marry at 20 or 30. There is no law prescribing that the girl should be married at a certain age. Only

there is a law saying that every man must get married at sometime or other, but here too there is no restriction about age. It is said that a man who does not get married is not one of us.

Q. But what about women?

A. In a way that applies to women too. It is better that we get our women married.

Q. It has been said by several people that the law regarding the Age of Consent in marital cases, whether the age be 13, 14, 15 or 16, is ineffective. Consummations take place before 13, but no case comes to court. The result will be the same if the age is raised, or the chances of cases coming to court might even be less. Therefore in order that any law might be effective, we should penalise marriages rather than raise the age of consent. What is your opinion?

A. Nature is always nature. If the consummation does not take place at the proper time it will be ruinous.

Q. But what I want to know is how to make the law effective. Suppose you say that before 14 no consummation takes place. Then there are no complaints, and the law is ineffective. Therefore, to make the law effective, some people have suggested penalising marriages.

A. Generally marriages in my part of the country are brought about and take place in the same village and nobody will know anything about them.

Q. But marriage is a known fact, whereas consummation is not. Do you think that the raising of the Age of Consent to 14 in marital cases would be effective?

A. No; in matters such as these the law will not be sufficient. It should be backed by public opinion. For instance there is a law regarding murders, and yet murders have not been prevented.

Q. Hitherto you have been speaking about the Muhammadans. Would you say the same thing about the Hindus? Would the procedure that is good enough for the Muhammadans be good enough for the Hindus?

A. These cases are different. You can easily know when a marriage takes place amongst Hindus. The husband and wife are almost always from different places. There is the ceremony of *Mukhlawa* and after that the girl will go to her husband.

Q. Would you suggest that in the case of Hindus there should be penalising of early marriages?

A. As both the communities are under one Government, one law for one community and another law for another would be resented. If these things are tackled socially it will be very easy to solve them.

Q. Do you think that penalising of marriages of girls before 14 and boys before 18 by law will be effective?

A. No. That will lead to a great deal of immorality.

Q. Even in the case of girls before 14?

A. Yes. India is a hot country and maturity here is much earlier than in colder countries. Of course, in the case of the Hindu girls there is less danger of their being immoral than the Muhammadan girl of the labouring classes, because the former are under the protection of their parents, who are mostly well-to-do and remain at home owing to their avocations.

Q. Do you therefore think that the age can be fixed at 14 in the case of Hindu girls?

A. Yes.

Mrs. Brij Lal Nehru: In the course of your introductory remarks you say that "By now many have read 'Mother India' . . . and thus there is a necessity of *via media*". What do you mean by *via media*?

A. I mean that we should not exaggerate things. Miss Mayo says many bad things about India. The other side says that we are pure, and that there can be no improvement. What I mean is that we should say that human nature is everywhere human nature.

Q. Therefore you are not saying it in connection with the law in hand?

A. No.

Q. You say that "India's morality stands much higher than the countries in the West". Do you think it is because of the low Age of Consent and the low age of marriage?

A. No; but early consummation immediately after puberty is one of the causes of morality.

Q. Do you not think that cohabitation at the age of 12 or 13 if it exists is as heinous a crime inside marriage as outside it.

A. Yes.

Q. Then don't you think that under the present circumstances of India immorality manifests itself in other ways?

A. I will tell you what I mean. When a girl has attained puberty, nature has brought it about. She then goes to her husband as a matter of course. If as in European countries the girls are not married till 20 or 24, there is the danger of girls going astray.

Q. And do you give preference to our state of things over the state of things that prevail in European countries?

A. Yes.

In answer to Question No. 2 you say that any advance to a higher age would tend to abduction and crime in consequence. Do you mean this advance outside marriage or inside marriage?

A. Outside marriage. Because inside marriage if a girl who has been bound by *Nikah* runs away with another man, that man will be tried under Section 498, I. P. C. If there is an unmarried girl of say 16 years of the age and if she is abducted the man will perform *Nikah* because if she has had puberty he can make a relation.

Q. How can this be brought about by merely keeping the Age of Consent at a low level? On the contrary I should think the raising of the Age of Consent to say 16 or 17 ought to have a checking effect on abductions?

A. Yes. If an unmarried girl is abducted the man can make *Nikah* with her consent provided she has attained puberty and according to Mohammadan law there will be no case against him.

Q. Do you mean to say that these abductions and seductions generally lead to marriages?

A. Yes. When a man runs away with a girl it is with the intention of marrying her. He marries her not with the consent of the parent but with her consent, and thus there is marriage between them but not with the approval of the family. The party of the parents generally take revenge which leads to tribal disputes.

Q. In your answer to another question you say that hardly any marriage takes place very early. What then do you think is the harm in advancing the age in marital relations?

A. Because it will be against Mohammadan law.

Q. Although it exists in practice yet. You mean to say that you would not like to have it fixed by legislature.

A. Because it will be against the law, and the Government has given us a pledge that they will not interfere with our religious laws. Practice is a different question. It is our option and we do not want to loose it.

Q. Is it true we have heard that after this Age of Consent Committee was formed some meetings took place in different places, and at one of the meetings it was declared by Mohammadans that the extension of the Age of Consent was wrong because in their religion 8 years was the minimum age for marriage as Aisha was 8 years old when she married to the Prophet.

A. Aisha does not come in at all. Ours is a written law and it is unalterable. "8 years" is not the question. *Nikah* can be performed with a girl when she is even 2 years old with her father's consent. I know the

fact. Our Prophet was also a Governor, and he married not only for the sake of marriage but for political relations.

Q. Does that not make a precedent?

A. No.

Q. I thought you took your stand on the doings and sayings of the Prophet?

A. Our written law is Alquoran. We do not follow the injunctions from an act of the Prophet which is against the written law as they were altered by the Prophet himself afterwards. We do not take our stand on them which are got afterwards obsolete.

Q. Do not you follow Hadis?

A. Not that which is against the Alquoran, which is not authentic.

Q. In answer to Question No. 12 you say that early cohabitation does affect the health of the mother and the child. Do you not think it is good to prevent it by all possible means as it would otherwise result in the deterioration of the health of our people?

A. Not by violating the laws of religion. That happens in Hindus where there are early marriage. In practice in the Punjab you would not find a Sikh or a labouring class girl ever marrying very early.

Q. In answer to Question No. 14 you say that you would like to have different procedure in marital and extra-marital cases. Would you please tell us what the difference should be?

A. A man has a different relation with his wife and if he is exposed to the same indignities of an ordinary trial in a court as a stranger it would be very bad for him. This was my reason for differentiation between the two.

Q. These are the reasons for making the differentiation but what difference would you suggest in procedure?

A. I think the offence should be cognizable. I would like the trial to take place in camera. If husbands were exposed they and their wives may not live possibly all their lives together.

Q. Would you like the punishment to be different?

A. Yes.

Q. How much punishment should be given in marital cases?

A. I think six months is quite sufficient.

Q. Don't you think fine only will suffice?

A. I think there should be some punishment.

Dr. Beadon: Would you not advocate corporal punishment?

A. I always do it. It is only the people with new ideas who do not want it.

Mrs. Brijlal Nehru: Whom do you think the right of complaint should be given?

A. Right of complaint will be only to the Government. I do not think the father or mother of the girl will come forward to complain.

Q. If you give it to the Government, it will be a cognizable offence.

A. Just have a Government pleader. That is after all for the good of the people.

Q. If parents want to complain would you give them the right?

A. Yes.

Q. If we gave this right to social reform societies will it serve any useful purpose?

A. It will be useful if there are any such societies. I do not think there are any such societies in Mohammadans in the Punjab.

Q. But such societies do exist in some places.

A. I have not seen Mohammadans doing such a work. There is another agency which might be employed and that is the village Mullah.

Q. Do you think that the right of complaint can safely be given to him?

A. Yes, he is the only best man suited for the purpose in the village. If any other man did it is possible that he may be one of the enemies of the family.

Q. As far as the Mohammadans go, would it serve any useful purpose if the right is given to social reform societies wherever they exist?

A. Yes.

Q. Besides these would you give the right to any other agency?

A. No; because if any other man does such a thing the family concerned will take revenge. It is these things that lead to blood feuds. There is a saying that disputes arise over 3 Zs, one Zar (money), 2nd Zamin (land) and the 3rd is Zan (woman). Poor people have not got the 1st and the 2nd but the Zan (woman) is there.

Mr. Ramaswamy Mudaliyar: Is your experience confined to the Punjab only?

A. I have got experience of various foreign countries, also. In India too I have been to other places such as Calcutta, Karachi, Delhi, Madras and Bombay, etc.

Q. But in those matters of intimate family relationship which are now under our examination do you know the conditions of Southern India?

A. No.

Q. Does the Quoran prohibit the fixing of a particular age?

A. No, it does not say anything about it.

Q. Because Quoran does not say anything about the age at which a girl is to be married therefore you say it implies that girls can be married at any age?

A. Yes.

Q. Does it say anything about consummation or Age of Consent?

A. As far as I know it is after puberty.

Q. Do you mean to say that there is no religious injunction about the fixing of the Age of Consent for cohabitation? Is it illegal at any age?

A. It is legal at any age. In Mohammadan law the marriage to a husband is legal even if the girl is two years old.

Q. And intercourse with the husband?

A. There is no limit. It is really after Balugh. Balugh is the age of puberty?

Q. Do you consider that the Government is interfering with religion in fixing the Age of Consent with the husband?

A. Yes. Puberty fixes the Age of Consent.

Chairman: In the Hindu law there is said to be an injunction that after puberty a husband must cohabit with his wife. Is there any such law in Mohammadan law?

A. No.

Mr. Ramaswami Mudaliyar: Can consummation of marriage be postponed after puberty also?

A. Yes.

Q. So far as Government's interference is concerned it has already interfered in two or three cases. First when the age was fixed at 10 and then in 1891 when it was raised to 12 and lastly when it was raised to 13 in 1925. Government has interfered to that extent?

A. If Government has done so we cannot say it has done good: because they have interfered with our religion and we must naturally resent it.

Q. Is there any feeling to the effect that Government has interfered with religion?

A. Yes. If a girl was 12 years old at puberty and then if you stop cohabitation with husband by law, it is bound to be resented.

Q. If she is under 13 she cannot consent whether she has attained puberty or not?

A. That much they have done against the Mohammadan law.

Q. Is there any difference between Shias and Sunnis on that point?

A. The law is common on that point. There is however one big difference that among Shias, Muttah or temporary contract is allowed.

Q. In answer to Question No. 20 you say that legislation fixing the higher Age of Consent will be more in consonance with the public opinion than that fixing the minimum age of marriage. Is that right?

A. Yes, that is right.

K. B. Mahbub Mian Imam Baksh Kadri: You say that the age of puberty varies between 12 and 13. According to Ulemas it is said that it varies from 12 to 17 and Abu Manifa extends it to 18. Is it not so?

A. They have taken extreme cases. I take it as cases happen generally.

Q. Ulema say that in such matters the law of Islam is elastic and judged in the light of the teaching of the Prophet it is progressive. Is that right?

A. Yes, that is right.

Q. So far as ultra-marital relations are concerned you would not mind if age was raised to 18 or as you said in your speech in the Council of State even to 50 years.

A. The trouble is this that if the girls are not given in marriage till such an age, they run away, and there is a great deal of trouble which leads to murders in my part of the country.

Q. In my part of the country there are several Mohammadans who marry their girls at a very early age and consummation often takes place before puberty. I would particularly give you the instances of the Ghanchis of Panchmahals in the Bombay Presidency. Do you not think prevention of such cases would be desirable?

A. I would not say anything from the point of view of all-India. I would only say that reforms may be of use to have. It is perhaps a proper thing. Religion never enjoins you to consummate marriage before puberty. On the contrary the recommendation is that the consummation should be postponed till after puberty.

Q. The object of marriage is to have Aulad, i.e., children of sound body and sound mind fit to serve God and His creatures. Do you think that such progeny can be begotten on a girl who is immature.

A. No; such children can be so begotten, further there are several injunctions which say that any man who injures a person commits a sin.

Q. In reply to Question No. 10 you say "I think a girl is generally competent to give an intelligent consent above 14 years of age". Would you not raise it to 16 or 18.

A. I think 15 is quite good.

Pandit Kanhaiya Lal: You propose that the Age of Consent should be fixed at 14. If there is increasing physical deterioration of the people and decreasing vitality among the progeny, would it not be safer to fix it higher in marital cases?

A. I would not budge from the point that puberty fixes the age.

Q. According to medical opinion there is no adequate development of the girl for child bearing till the age of 16. Would it not therefore be dangerous for a girl and her progeny, if consummation takes place at 14?

A. But we differ with the medical opinion, because we think that a girl of 14 years in the Punjab is strong enough. It all depends on the climate. We never see in the villages that a girl of 14 is weak.

Q. Is not the percentage of mortality among mothers and children as high in the Punjab as in the other provinces?

A. That is at least not due to early marriages among Mohammadans. It may be due to other causes. I have not seen the statistics, but it ought to be less than in any other province.

Q. You have said that the girl is not able to give an intelligent consent to cohabitation till she is above 14 years and you have said by that, you mean that she is able to give intelligent consent at the age of 15. Would it not therefore be better to fix the Age of Consent at 15, because she is only fit to give intelligent consent at 15?

A. I do not think it will be appropriate. It is useless to have a law which no human being in our country is going to follow.

Q. In the Punjab I understand that women are fewer and cases of seduction are very common?

A. I would not say so. I have not got statistics.

Q. The Inspector General of Police in his Annual Report recently said that cases of seduction and kidnapping were increasing. They were more numerous during the last year than they were in the preceding year.

A. It is the weakness of the English law which says that if anybody takes away a girl of above 16 years he is welcome and no action can be taken against him, though it may be against the wishes of the parents.

Q. If women are fewer in the Punjab and cases of seduction and kidnapping are common, would it not be desirable to give adequate protection to our girls by putting the Age of Consent higher?

A. Yes.

Pandit Kanhaiya Lal: For how long is the birth register preserved?

A. It is maintained as a permanent record.

Q. Is that a permanent record or retained only for 15 years?

A. No. As far as I know it is a permanent record.

Q. Are you equally sure that the vaccination registers are also permanently preserved?

A. I think so. Because in many cases you have to apply for copies and get them so as to verify the age.

Mr. Ramaswami Mudaliyar: Is there a vaccination register in the Punjab?

A. Yes, there is.

Pandit Kanhaiya Lal: But it is maintained for some years only in many places?

A. If it is not maintained permanently, I think, at any rate it ought to be maintained for 20 years.

Q. Do you think it would be better, in the case of the birth register, if a certificate is issued at the time the entry is made, to the person reporting the birth, giving a copy of the entry so that he might preserve it for future use in case the birth register is destroyed?

A. No use whatsoever. The poor Zamindars cannot possibly preserve it. Most of them have got no boxes and where is it that they are going to preserve it. They possess sometimes stamp papers worth thousands and in many cases they are lost. These will also be lost.

Q. Would it not be better at any rate for people generally to have such a provision?

A. Useless. it will only mean extra labour to the clerk concerned.

Q. Would you approve of the idea that every man who goes to make a report of the birth of a child should be required to put his thumb impression or signature on the register so that evidence about his identity might be available?

A. It is generally done. The *chowkidar* has got these registers; and he goes every week or so and when he reports all these things, either his thumb mark, or if he can write, his signature is taken. Sometimes he keeps a sort of seal which he affixes to it. No reports have come where they have not got the signature of the man who reports.

Q. I don't think in the case of vaccination registers any signatures are taken.

A. Well, I am not sure. I think there must be some signature, either of the man who has vaccinated the child or somebody else.

Q. Do you think they are reliable?

A. Well. I think they are reliable. Because Government takes action against any man who refuses to bring his child for vaccination or against the Lambardar who would not report or present all children born in the village for the purpose.

Q. You have suggested that there should be no interference by the Police in marital cases.

A. Yes, because they will be uselessly troubling the Public to extort money.

Q. You propose that the Mullah might be given the authority to make a complaint in marital cases.

A. The Mullah is the man upon whom everybody relies.

Q. But the danger is that the Mullah might be afraid of losing his livelihood even if he comes to know anything; and the parents of the girl and the husband would naturally not like to give the matter any publicity; and the whole law might become a dead letter.

A. Hardly one case out of a 100 comes to light in a village and the law would even now be a dead letter.

Q. Have you any remedies to suggest to prevent this?

A. There is only one remedy and that is that the people should be educated in this connection. Ordinary education which is not at all right, and not on proper lines won't do. Unless people are educated to the idea that it is not good to do such a thing they will not come forward.

Q. That is the law must be reinforced by public opinion in order to be effective.

A. Well, that is not going to be.

Q. It will take a little time.

A. A very long time, in my opinion.

Written Statement, dated the 20th July 1928, of Rai Bahadur Lala MOHAN LAL, B.A., M.L.C., Advocate, Simla.

1. Yes.

2. (2) The reasons for making an advance on the present law of Age of Consent are that the health of the girls who are married at an early age suffers. Some of them are incapable of leading family life after the first child birth. The issue that is produced from the girls who are married at young age is weak and unhealthy. The mothers show signs of early decay. With the advancement of times it is absolutely essential that the Age of Consent for marital relations should be increased.

3. I have no personal knowledge.

4. Yes.

5. The girls attain the age of puberty at 16. There is no much difference in this respect amongst the girls of various castes and communities now. Formerly the girls living in villages were more healthy than those living in town. Now town residents are also taking care to see to the health of their girls.

6. In my part of the country the cohabitation begins generally about a year after the marriage but not until the girl is over 12 years of age. No cases are reported in court.

7. I have no knowledge.

8. Yes. The "Gaona" ceremony is performed in case of girls who are grown up immediately after the marriage, in other cases a year or two after the marriage if the girl is married at the age of 9 or 10 years.

9. Perhaps a doctor will be in a better position to give an opinion on this question but personally I think that girls should not have consummation of marriage until they have attained the age of 16 years.

10. At the age of 16.

11. I know of two cases in which the girls at the age of 11 cohabited with their husbands and at about the age of 12 produced children which were unhealthy and the health of girls suffered tremendously and both of them became lame.

12. Yes.

13. Yes. The Society to which I belong is Arya Samaj. It is trying its best to inculcate an idea in the minds of the public that the girls should not be married until they are grown up and capable of enjoying the married life and the public now appreciate the benefits of this advice and are generally acting on it.

14. They used to do so before but not now.

15. Yes. But with the present maintenance of birth registers this difficulty is being minimised. The medical examination of girls is not of very much use.

16. Yes. In my opinion the girl who is of advanced age can be better judged of her appearance than a girl who is of young age.

17. I would maintain the present punishment prescribed for extra-marital and marital offences.

18—19. I have no suggestions to make.

20. Yes. Penal legislation fixing a higher age of consent for marital cases is likely to be more effective.

21. I would like to strengthen the penal law to secure the object in view, also take steps towards the social reform by means of education and social propaganda.

***Oral Evidence of R. B. Lala MOHAN LAL, B.A., M.L.C., Advocate.**

(Simla, 11th September 1928.)

Chairman: Are you the President of the local Municipality?

A. I am a member of the Punjab Legislative Council, President of the local Arya Samaj, Vice-President of the Arya Samaj Pritinidhi Sabha, President, Hindu Sabha, and Senior Vice-President of the local Municipality.

Q. In answer to question No. 4 in which we have asked whether the amendment raising the age of consent within the marital state to 13 has been effective in any of the three ways you have said "yes". Shall I take it that it has been effective in all the three ways?

A. No. (1) and (3).

Q. Well, in what way has it been effective?

A. Simply because people get the information that this is the law and generally they would not like to do anything which will mean a breach of that law. It is only moral force that has made some people follow the law.

Q. Do you think that a large number of cases go undetected?

A. Yes, they do occur but go undetected.

Q. What percentage would you put of the cases that do occur but really do not come to court?

A. 60 per cent.

Q. Then you practically concede that in a large number of cases the law is not effective.

A. I quite agree with you.

Q. In answer to question No. 20 you have said that penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective. If you say that the present law about the Age of Consent has not been very effective why and how do you say that penal legislation fixing a higher Age of Consent is likely to be more effective?

A. I will modify my answer by saying that both, raising the Age of Consent as well as a law regarding marriage, are necessary. I would strongly support Mr. Sarda's Bill and would say that no marriage should take place before 16.

Q. In answer to question No. 14 you have said women in your part of the country used to favour early consummation of marriage before but not now.

A. Yes, because now we are preaching. The Arya Samaj has taken the work in its hands and other associations also have taken up the work. It is only a moral pressure. Supposing I marry my daughter at 16, 18 or so, other people also would follow me and marry their daughters late. Although to my shame, I still find that the girls are married at 2 years or 1½ years' age.

Q. Do you know anything special about the hill-tribes of this district?

A. I know of Simla and of the district of Kangra.

Q. Do you think they marry very much young, below 13 for instance?

A. In Simla they are better now. They used to marry at a very low age before, say, 10 years. The reason is that some of the residents of Simla District, who have got education, have come in Simla and got employment. They are preaching to the hill people to give up bad customs and trying to remove some of the bad customs that prevail amongst them, one of such customs is the marriage. *Rit* is an arrangement by which the man who wants a wife pays a monetary consideration to former husband of the woman and then she become free to marry again. It is a sort of separation.

Mrs. Nehru: Does the husband still have a lien on the wife?

A. No. In a way she is sold off.

Dr. Beeton: Do you think polygamy is common?

A. That is only in Rampur, Bushahr. It is dying out.

Chairman: Do you think there is a large percentage of cases of marriage at a young age, that is, below 12 amongst the hill-tribes?

A. Yes, there are young marriages among the hill-tribes.

Q. Do you know that there is a great deal of barrenness and sterility among the hill-tribes?

A. The reason is the venereal diseases.

Q. You would rather put it to venereal diseases than to early marriages.

A. Both combined.

Q. Is there a very large number suffering from venereal diseases amongst hill women?

A. A fairly good number.

Q. Do you think that the raising the Age of Consent or penalising marriages would cause any opposition in any part of the country?

A. The Punjab will welcome it.

Q. What about the hill-tribes?

A. You pass it or not, they are not concerned with it. The word of the Ruler of the State is the law. Whatever laws you pass in British India the residents of States do not care for them at all. The law applies only,

within British jurisdiction. Simla town and one or two other places like Kotgarh and Kotkhai are within British territory.

Q. In your answer to question No. 15 you have said that with the present maintenance of birth registers this difficulty with regard to the determining of the age is being minimised. Has there been any improvement in the keeping of these registers?

A. No. But these registers, although they are not reliable, give some information as to the age of the girl when the question arises.

Q. But you have said that with the present maintenance of birth registers the difficulty is being minimised.

A. I mean, there used to be only one source before, that is, medical evidence.

Q. Since how long are these registers being maintained in the Punjab?

A. For the last 20 years.

Rai Bahadur Pandit Kanhaiya Lal: As regards marital cases would you make the offence cognizable?

A. I will keep it non-cognizable as at present.

Q. You would not allow the police to interfere in these cases unless a complaint is made by some responsible person. To whom would you give the right of complaint?

A. To the girl, her husband's mother, her husband's father and the girl's father and her brothers too and any other relations of the girl, in other words, the guardians or relations of the girl. I will illustrate. Suppose there is a brother of the girl. If he thinks that the prosecution is desirable, let him report. Otherwise the crime may not be brought to light at all.

Q. Why do you include the parents of the husband? They would not be interested, even if they wanted, to give the information.

A. For the reason I have just given.

Q. Would you like to give the power to any religious and social organizations like the Arya Samaj, the Hindu Sabha, and the Sanatan Dharma Sabha, or to a women's society?

A. To women's association I would. I won't include any other, because it will be rather difficult for them to interfere in the domestic affairs of other people. There are so many factions, so many disputes, and jealousies amongst some of the families.

Q. There are very few women's associations in the country; and so by excluding the Arya Samaj, the Hindu Sabha and other social reform organizations, would you not be reducing the number of persons who would be competent to make the complaint?

A. I know this. But if you want to make a change in the society you have to be very cautious and careful. If you make any such drastic change, it will be resented by the people and the law making the change would be defeated. I know also, as a Hindu, that there will be many who would not like the change and create unnecessary trouble. Some of the families have got factions and disputes among themselves. This is especially so in the Punjab, where one would kill another for the sake of a woman. We read in the papers about hundreds of such disputes.

Q. Do you think that there would be a danger of collusion between the parents of the girl and the parents of the boy?

A. This will be even if there were many women's associations. The law will remain inoperative for some time. We are now making a change in the law, and if 10 years after we find that the law has not been effective I will be the first man to say adopt more strict measure.

Q. You have told us that 60 per cent. of cases go undetected. What remedy do you propose to meet this situation?

A. I quite agree that there is no chance of the case coming out if the parents of the parties only have the right to make a complaint, but there is

also the danger, as I have said, that the people may be unnecessarily hauled up, trouble and harassed. We have had cases in the different provinces in which when they are brought to court and the girl feels disgraced, she eventually turns round and says that my husband never touched me, although medical evidence is to the contrary. In other words the attempts of law to prove the offence are defeated. After all she has to live with her husband. She cannot go to A or B. If we give the power to the Hindu Sabha or other associations, the life of the girl would become miserable and the husband would not like to have the wife back. The result would be that the Hindu girls might go to Mohammadans and Mohammadan girls might go to Hindus. There would be a great commotion in the society. Therefore the legislation must be on very cautious lines.

Q. What would be the nature of the punishment you would suggest for marital cases?

A. As already provided.

Q. Will you have these trials in camera?

A. Yes. I would prefer that. That will be another help to bring some cases to light which might not otherwise be brought to light for the reasons I have already given. After all the interests of the girl have to be looked after.

Q. Would you have fine or imprisonment?

A. I would have either or both according to the nature of the offence.

Dr. Beadon: Would you suggest corporal punishment?

A. I am not in favour of corporal punishment.

Pandit Kanhaiya Lal: Would you recommend the appointment of women magistrates?

A. I would prefer that, if they can be had. Women should be the judges for such offences.

Q. As regards extra-marital cases, what is the age you recommend?

A. 18.

Q. Considering the fact that there might be girls, particularly in the hills, of a very loose character, don't you think that there would be a danger, in cases of consent, of hardships to boys, if you raise the age as high as 18?

A. I am one of those who would strongly punish the man who looks at another woman over whom he has got no right.

Q. But if the woman consents?

A. Well, I won't blame the women. It is we, men, who are to blame. The women do not consent easily.

Q. But if there is a case in which a woman goes wrong and she is discovered, the woman would naturally say I was forced. In cases of that character, don't you think that the age of 18 would be a hardship to the boys?

A. But I have said any man who looks upon any woman other than his own wife is immoral, and should be strictly punished.

Q. Is the system of registration of births working satisfactorily?

A. The difficulty, both among the Hindus and Mohammadans, is that we do not name our children at birth. Our custom does not permit of naming the children within that period and the *chowkidar* has to report immediately in the village and then go to the Thana within 24 hours.

Q. Would you recommend that after a girl or a boy has been named, an obligation should be placed on the parents of the child to report the name?

A. Yes.

Q. And that entry should be made against the previous entry?

A. Yes.

Q. As a matter of further precaution would you recommend that the man who makes the report should be required to make a thumb mark?

A. He should sign or put his thumb-impression.

Q. Would you also recommend that the person who registers the birth should at the same time give a certificate or a copy of the entry, giving the necessary particulars, to the person making the report, so that the man making the report may be able to preserve it?

A. Certainly; if the man wants to keep a copy he should be given.

Q. Should the certificate be given at the time the report is made?

A. I would prefer it.

Q. Do you know how long these birth registers are retained?

A. I do not know.

Q. If they are retained for 15 years, would you consider that period sufficient?

A. They should be maintained for as long a period as the age is fixed. If you fix the age at 16 or 18 years, the registers should be maintained up to 18 or 20 years.

Q. Are you in favour of registration of marriages?

A. You may have registers. It is only a proof that a certain marriage has been solemnised.

Q. To whom would you give the authority to register?

A. The register should be kept as near as possible to the place where the marriage is solemnised. In the villages I would prefer the registers to be with the Zaildars or Lambardars, but it should be their duty to send extracts to the head office or send those registers after one month to the head office or the registers should be verified and initialled periodically by some higher and responsible officer such as the Tahsildar.

Q. Would you require the priests to report all marriages or to maintain registers of marriages themselves?

A. They will not be of very much value because I know they are amenable to influence and some of them may give trouble afterwards when a case goes to the court.

Q. Would you fix the same age for consent and for marriage?

A. Yes.

Q. You refer in your evidence to some cases of injury resulting from early consummation and early maternity. Is that your personal knowledge?

A. Yes. In both cases the girls became lame.

Dr. Beadon: After how long?

A. I cannot say. In one case when I saw the girl tears came out of my eyes. She could not walk.

Q. Was that in the hills?

A. No, that was in the Kangra District. Such cases are rare but still cases do occur.

Mr. Kudri: In answer to question No. 6 you say that generally consummation takes place at the age of 12. You also say that girls attain puberty at the age of 16, so shall I take it to mean that generally consummation in your part of the country takes place before puberty.

A. Yes, in the majority of cases.

Mr. Mudaliyar: Do you mean to say that in the Punjab girls attain puberty at the age of 16? By puberty I mean commencement of menses.

A. No. I was under the impression that puberty is the age of full development. Menstruation begins at the age of about 12 or 13.

Q. Is there any religious ceremony or social function performed immediately before consummation?

A. Not in our part of the country. Muklawa is different. That has no relationship to consummation. Muklawa is a custom when a girl goes to her father-in-law's house after marriage for the first time. It has nothing to do with her age and whether puberty has commenced or not.

Q. As regards the trial of these cases would you suggest a court of domestic relations to be established, that is, non-officials and respectable gentlemen of the locality, a court to try such cases, instead of the case being sent to a magistrate?

A. Having regard to my knowledge of the Punjab I can say that there are so many frictions that people sometimes in the garb of friends try to disgrace other men's families. I would not, therefore, recommend it. I would like to have women's courts for this purpose.

Q. Will the women's society not be invaded with the same spirit?

A. Not so much. It is an offence committed against the person of a woman and they are the better judges. They will have some sympathy for their own sex. She would make a free statement. Many cases do not receive justice because girls cannot stand cross-examination.

Mrs. Nehru: You have no objection to ordinary courts of women being established for this purpose?

A. No.

Q. What procedure would you like to be adopted for the trial by such courts?

A. As simple as possible—summary trial. If the women are well-educated and intelligent they can try these offences summarily but some procedure should be laid down.

Q. What would you like that procedure to be?

A. I would like to amend the procedure that is being followed at present. It should be midway between a lengthy and a summary trial.

Q. Can you explain it?

A. I have not studied it but I can send it to you later on. (The witness promised to send it.)

Q. Would you recommend the punishment to be reduced to fine only?

A. It should be in the alternative—fine or imprisonment. So that if the circumstances are such that the offence is very serious, the offender should be punished with imprisonment otherwise generally it should be fine.

Q. What do you think is the cause of the law remaining ineffective?

A. It is due to the old habits of the people that they do not want to go to the court which brings disgrace on the family.

Q. If imprisonment is eliminated, do you not think there is chance of that disgrace being less and complaints being made more than now?

A. I personally doubt it very much.

Q. Have you known of any cases taking place under this law?

A. Within my knowledge there have been one or two cases that have come to light.

Q. If cases do not come to court and if the law does not apply, what is the use of having it on the statute book?

A. It is not due to the severe punishment provided but usually it is due to the apathy of the people. They do not want to bring these cases to light because they think that it will bring disgrace to the family.

Q. Are there any means by which we can bring them to light?

A. It is only by education and propaganda.

Q. If as you suggest we eliminate disgrace from it then do you think there are chances of cases coming to light?

A. Certainly.

Q. But not the reduction of punishment?

A. No. Even if the punishment of imprisonment comes from a court of women and through a summary trial, it entails disgrace.

Q. Would not disgrace be eliminated if imprisonment is eliminated?

A. Punishment with imprisonment should be resorted to in very rare cases, but generally the punishment should be fine. Both should be provided for.

Q. Do you think the parents or guardians of the boy should also be punished because it is as much their fault?

A. Abetment is already there. I think it is Section 109, Indian Penal Code.

Q. In cases like these can parents be proved to be abettors of the crime?

A. It is very difficult. In fact the consummation of marriage does not take place under the present conditions of India unless the mother or father knows it. When the girl is in the house of mother-in-law certainly consummation takes place not only with their knowledge but with their desire. They initiate it.

Q. If it is they who bring it about do not you think that some provision ought to be made to punish them also?

A. The law is already there.

Q. You refer in answer to question No. 11 to certain cases of injury to the girls. Did they belong to the Arya Samaj?

A. No, they were Sanatanists. It is only they who have got wretched *shlokas* about early marriage.

Q. Does all that you have said about the conditions prevailing in the Punjab apply to Arya Samaj only?

A. Sanatanists are also following the Arya Samaj. My remarks apply to both.

Dr. Beadon: Is it your opinion that early marriage does not seem to have any effect on the venereal diseases in the Simla District?

A. Although they are early married yet in some cases they have this disease. It is a hereditary disease among some people.

Q. In answer to question No. 5 you say that the girls living in villages who are more healthy than those living in towns attain puberty earlier. Is that right?

A. In the villages there is no *purdah* and the girls have free exercise. In the cities the girls were confined to their houses but now as we have given up *purdah* girls go out for a walk and play tennis, etc. Now the conditions are nearly the same in both villages and cities.

Q. We have been told that in the Punjab villages girls of 16 unless they are married run away.

A. It is only among the low classes. There is a good deal of seduction but the men are the culprits and not the girls.

Pandit Kanhaiya Lal: The contention was that it will give greater chances to the seducers if the girl is unmarried. If the girl is married then the seducers can be followed, and if unmarried the seducer will take her away and marry her.

A. I do not agree with that view.

Dr. Beadon: The two cases of lameness you referred to were personally known to you?

A. Yes.

Q. Before they were married, did they seem to be in fairly good health?

A. They were fairly well developed. I think both gave birth to children at the age of 12½. The children produced were unhealthy.

Q. Did you see the children?

A. Yes, they were sickly.

Q. Did they both live?

A. I have no recollection.

Q. Did it happen in your village?

A. Near my village.

Q. Were they both Hindus?

A. Yes.

Q. Did both of them become lame permanently?

A. One of the girls is dead, but when I saw them they were lame.

Q. Can you tell me how long after one died?

A. I cannot tell you. Of course, these are rare cases.

Written Statement, dated the 14th August 1928, of Dr. KEDAR NATH, L.R.C.P. & S. (Edin.), L.F.P.S. (Glas.), L.M. (Dub.). Surgeon, Physician and Dentist, Simla.

1. Most thorough enquiry from educated and uneducated population of Simla elicited the fact that nobody knew what the Age of Consent was. In some cases practising lawyers even did not know what the Age of Consent was. If the educated people holding responsible posts do not know what Age of Consent is, the uneducated people are excusable if they do not understand what is meant by Age of Consent. Therefore question No. 1 does not arise.

2—4. Cohabitation of married couples is necessarily a secret and private affair usually occurring with mutual consent of the parties concerned. Therefore such cohabitations never come to light. But as a medical man I have seen hundreds of girls who are mothers at 13. My answer therefore to sub-headings 1, 2, 3, of question No. 4, is in the negative.

The only remedy is by educating public opinion against early marriage or penalising early marriage. There will be one great advantage of raising the Age of Consent and that is this:—

Seduction of girls for immoral purposes is a very common crime in the hill districts and generally this seduction is most common among girls of above 13 years of age. If the Age of Consent is raised to 18 years outside marital state, it will greatly help to check this immoral traffic.

5. Usual age is about 13 years. I cannot say if there is any difference between different castes, etc.

6. Answers to all the three sub-headings:—

Very common among all classes of hill people.

Such cases never go to courts.

7. Among certain classes of Sanatanist Hindus, there is a religious belief that girls should be married before they menstruate but educated Sanatanists do not follow that belief. There is no penalty prescribed for breach of this rule among the Sanatanists.

8. *Gaona* is performed but the time at which *gaona* is performed depends more on the convenience of the parents of the girls and the boy, rather than on any consideration of whether the girl has attained puberty.

9. Attainment of puberty is certainly not a sufficient indication for consummation of marriage. I think three years after puberty should be the proper time for consummation of marriage, that is at about 16 years.

10. This depends on the education of the girl but it will be safe to say that at 16 years a girl would be competent to give intelligent consent to cohabitation.

11. In the hills cohabitation as I have said above, is common among girls before puberty and it is noticed that barrenness also is very common among hill people, resulting in a progressive numerical loss in population.

N.B.—Venereal disease may partly be responsible for barrenness.

12. Yes, I think so.

13. Answer to No. 1, covers this question.

14. Educated women don't, but uneducated do.

15. I have not studied this question.

16. I don't think this will have any effect.

17. Yes. 16 years for married and 18 years for extra-marital. Punishment for marital—fine up to Rs. 500 or simple imprisonment. For extra marital—same as under Section 376.

18. Marital cases should be tried by jury and extra-marital as before.

19. I am not in a position to answer this question.

20. Uneducated public will not like either measure, but as I have said above, Sarda's bill is the only effective remedy.

21. I would prefer social reform by means of education.

***Oral Evidence of Dr. KEDAR NATH, L.R.C.P. & S. (Edin.), L.F.P.S. (Glas.), L.M. (Dub.), Surgeon, Physician and Dentist.**

(Simla, the 12th September 1928.)

Chairman: Are you connected with the local Arya Samaj?

A. Yes, I am the President of the local Arya Samaj.

Q. Is not Mr. Mohan Lal, the President of the Samaj?

A. Lala Mohan Lal is the President of the Gurukul section of the Samaj, and I am the President of the College section.

Q. Are you a social worker apart from your being a doctor?

A. Yes, in the sense that I am connected with one or two societies.

Q. Do you come in contact with the people here?

A. Yes, I do. I am the Secretary of the Hindu Orphanage here. I am the President of the Vidya Pracharini Sabha. I am also the Secretary of the Society for Prevention of Traffic in Women.

Q. How long have you been practising here and how long have you been in contact with the people here?

A. Since 1912.

Q. Do you know from your experience of any cases in which there has been cohabitation before puberty?

A. My difficulty in answering the question was that here in the hills early cohabitation is very common and venereal diseases is also much prevalent. It becomes impossible, therefore, to differentiate whether the injury received by the girl, and sometimes the consequent sterility were due to venereal diseases or early consummation.

Q. Leaving the hill-tracts for the present, have you come across any case where they have suffered on account of early unions?

A. Yes, I have.

Q. In how many cases there was either loss of vitality, or death from the suffering?

A. I am a Licentiate in Midwifery, and I get gynaecological cases. My professional experience has been that in cases of early consummation women suffer from displacement of the womb more often than in cases where the consummation takes place when the girl is fully developed.

Q. Does it result in loss of vitality?

A. Yes.

Dr. Beadon: When you say that this happens as a result of early consummation, do you mean that it is because of child-birth after consummation or of cohabitation only?

A. Because of cohabitation in the first instance and child-birth afterwards.

Chairman: Have you had any case of actual injury to the parts or any case of adverse results to the child?

A. I have seen cases of injury to the parts in which there was very bad bleeding.

Q. Was it among the people other than those in the hills?

A. If the displacement of the womb can be called an injury to the parts. I have seen this in the case of other people also. I have seen two cases in my life where cohabitation was very painful and ruptured the parts. In one case there was profuse bleeding and I had to be called at night.

Dr. Beadon: Was that a rupture of the perineum?

A. Yes. The other case was similar, but there was no hæmorrhage.

Q. Do you think that early connection, say, before 13 has a distinctly bad effect on the health of the child?

A. Early connection like this results in injury to the parts and is a sort of preventive to fertilisation, and in cases where fertilisation takes place, the offspring is generally weak. I know one case in which all the children later on died prematurely. The gentleman in question was a relation of mine. He was married at 13 when the girl was 11 and they got the first child when the girl was 12.

Chairman: This is indeed a very rare case. Where was it?

A. At Jullunder. This gentleman is now 41 years of age and has living children from the second wife.

Q. Would you prefer penalising marriages or penalising marriages as well as fixing an Age of Consent?

A. Both; I have said so in my answers.

Q. You say that "Sarda's Bill is the only effective remedy".

A. I do, because it will be a sure check to early consummation.

Q. Can you suggest any method to reconcile the orthodox who are in favour of pre-puberty marriage and early union after puberty with securing the object in view as contained in the two kinds of legislation that are now before the Council, namely, to prevent early motherhood? How can we make the two consistent?

A. Yes, I can suggest a method, but it will be difficult in operation. It can only be a sort of theoretical reconciliation. I would suggest making *Gaona* criminal, till a girl is 14 or 15. The orthodox people cannot possibly object to it.

Q. It may be circumvented because *Gaona* may not be performed at all. Consummation is a secret and private affair. Making *Gaona* penal may not therefore result in the object which we have in view, namely, to prevent early motherhood.

A. But it will have a sort of moral effect. I suggest it only as an alternative, in case orthodox opinion is so strong that it comes in the way of your enacting this bill of yours.

Mr. Kanhaiya Lal: By *Gaona* do you mean consummation or the Muklawa ceremony?

A. I mean the Muklawa ceremony, when the wife goes to the house of the husband for the first time.

Q. Is Muklawa ceremony common in the Punjab?

A. It is essential.

Q. Does *Gaona* sometimes take place long before the period of puberty in order that the bride may be able to visit the house of her mother-in-law on ceremonial or other occasions?

A. Yes; in the case of early marriage.

Q. In that case how would your proposal work?

A. It will prevent the boy from visiting the girl. It will make it criminal for the girl to go father-in-law's house. Consummation is not therefore also possible because the boy is not allowed to visit the girl.

Q. It appears that in the Madras Presidency the first consummation or *Garbhaden* ceremony takes place at the house of the parents of the wife. So if you merely penalise *Gaona*, consummation would not be affected by it.

A. In Madras probably not.

Q. And where *Gaona* takes place long before puberty, the same result will follow, namely, that consummation will not be affected.

A. But the bride and the bridegroom cannot come together, if they are not allowed to mix.

Q. You probably realise that on all ceremonial occasions it is the earnest desire of the parents of the husband that the bride should come and join in the festivities, and in order that the girl might be enabled to join in the festivities they invariably get *Gaona* performed earlier or otherwise bring the girl home. Is that not so?

A. That is so. But it is not a religious objection. It is only a social difficulty which the orthodox community will not mind.

Q. But the orthodox community might object to the *Gaona* being penalised, because in that case there will be some hindrance to the proper celebration of the domestic festivities.

A. That will be only a social handicap which probably orthodox opinion would like to compromise with the most advanced fellow countrymen of theirs. Anyhow that is my view.

Q. But would it not be better that instead of penalising the *Gaona*, we might penalise consummation of marriage?

A. Consummation of marriage would be more difficult to penalise, because that will be a secret act, whereas *Gaona* is a public act and is performed in the presence of the relations.

Q. Is there anything criminal in *Gaona* itself?

A. No. We might make it criminal, if it is followed by consummation. The law as it exists does not make *Gaona* criminal. We are talking of what it should be.

Q. Is there anything essentially wrong in *Gaona* itself to require the help of the Legislature to make it a crime?

A. It is only a compromise I am suggesting. I am also suggesting the raising of the Age of Consent and also the marriageable age. I suggest this as a compromise.

Q. How can you get over the objection of the orthodox community? If *Gaona* is penalised, don't you think that the objection will be intensified? Instead of penalising consummation, what is the use of penalising a mere visit of the wife to the house of her mother-in-law?

A. I have not consulted orthodox opinion on the subject. That is my personal view. If the religious objection is removed, they should be reasonable. My own opinion is that early motherhood is bad. But at the same time one cannot get over religious difficulties. If there is some way by which the religious difficulty can be got over, the way I have suggested is one. There may be other ways.

Q. There is a religious difficulty about marriage certainly, but where is the religious difficulty about consummation?

A. If *Gaona* is postponed, consummation will also be postponed.

Q. You have said that you would like to fix the Age of Consent in marital cases at 16. Would it be acceptable to the orthodox classes?

A. I do not think so. I do not think anything will be acceptable to them.

Q. Would 14 or 15 be in consonance with orthodox opinion?

A. Possibly.

Q. Would the rural classes welcome an age limit of 16 in marital cases?

A. I think it will depend upon the attitude, the orthodox community adopts in the cities, because unless there is agitation, the rural community will, in my opinion, adopt the new custom, or adapt itself to, any law that may be enacted.

Q. There is considerable poverty in the rural areas. If we fix a high age limit, say, as high as 16, do you not think that their poverty will give rise to considerable opposition on their part, because they will have to feed the girl till 16?

A. It will be just the contrary, because when the girl is between 10 and 16, she becomes useful in the house; and it is the time when the mother is most reluctant to part with her daughter. The girl helps her in cultivation and other domestic work.

Q. You are probably aware that there have been cases under the Age of Consent Act, even as it now stands, but not many. Have you any suggestions to make the law effective, besides the one you have mentioned about making *Gaona* penal?

A. I am not able to offer any suggestion.

Q. Would you make a marital offence cognisable or non-cognisable?

A. No, I will make them non-cognisable.

Q. To whom then will you give the authority to make complaints as regards marital cases?

A. If that is possible, I think, the best solution would be to make some sort of *Panchayats* in every *Mohalla* and every street in the city.

Q. Will you have communal or local *panchayats*?

A. I would have local *panchayats* and these should be made responsible to make reports of these cases.

Q. Have you got village *panchayats* in the Punjab?

A. I think so.

Q. Would you give these *panchayats* authority to report any case of disobedience occurring round about in that locality?

A. Yes.

Q. Would you give the authority to the parents or the guardians or other near relations of the girl also?

A. They would be included in the *panchayat*. *Panchayat* means necessarily the representatives of the locality, and the parents being the inhabitants of the village, they would necessarily be represented.

Q. But if they are not represented on the *panchayat*, you will have no objection to give the authority to the guardians or parents or near relations of the wife or the husband or both.

A. I don't quite see; that authority still exists with the parents. What more authority do you want to give them?

Q. Would you give the authority to the parents or relations of the girl in case there is no *panchayat* or where the *panchayat* takes no action?

A. No, for the simple reason that these cases are not reported and they are reported when there is a dispute between the bridegroom's and bride's parents; and when there is a dispute, there are motives.

Q. Would you therefore deprive even the parents and relations of the girl of the right of making a complaint?

A. Well, I would give them the right in case there is no village *panchayat*.

Q. If the village *panchayat* refuses to take action? *

A. Well, in that case you can make the complaint to the magistrate; and if he finds there is a *prima facie* case he can take cognizance. But the parents should have authority to make a complaint to the magistrate and not to the police.

Chairman: Considering the fact that there is a lot of strife in the villages, don't you think that the setting up of these *panchayats* would lead to unnecessary prosecutions?

A. No, because I don't agree with you that there are factions in the villages. My experience of village life is that it is all a smooth sailing. There is no strife as in the cities.

Mr. Kanhaiya Lal: Would you give that authority also to the Women's Associations that are springing up now in the country?

A. How would these Associations be in touch?

Q. Women move among women and they are likely to know better the conditions prevailing in different households; and they can decide among themselves whether it is a case suitable for taking action.

A. Do you mean to say that a society of women formed in Simla may have the right to make complaints of the crimes in Simla and in its neighbourhood or in the whole of the Punjab.

Q. In the district at all events!

A. Oh yes, I think, you can.

Q. Would you give the authority to the social reform or religious organizations in the country like the Arya Samaj, the Hindu Sabha and the Sanatan Dharma Sabha?

A. Yes, I think so.

Q. Do you think that the imposition of a fine will meet the ends of justice and act as a sufficient deterrent?

A. I don't think so, because in the case of rich people where money is no consideration there would be no check at all.

Q. Would you impose fine or imprisonment or both or would you make imprisonment one of the necessary penalties for the infringement of the law?

A. No, I would not, I would leave that to the discretion of the court.

Q. Do you recognise that a fine is only a penalty on the parents or guardians and seldom on the husband who has infringed the law?

A. You assume that the man is not earning. Well, I think, if he is so young, then certainly he is not responsible, and the parents ought to be penalised. It is only right that they should not have married him so early.

Dr. Beadon: Would you have flogging?

A. No.

Mr. Kanhaiya Lal: You have suggested that in non-marital cases the age might be fixed at 18. Are not the morals of the girls much loose in the hills?

A. They are.

Q. Well, in that case is there no danger of young boys falling a prey to temptation and cases of hardship might thus arise where the girl is a willing party?

A. The cases will not come to light when the girl is a willing party.

Q. They come to light when some person observes an improper act being done. He goes and tells the parents of the girl or the boy that he saw such and such a thing being done?

A. But it becomes very difficult to prove that here in the hills. For proving cases like that an examination by a doctor is necessary. That is not possible in the hills, because we have got so few dispensaries, and those too not within easy reach.

Q. If such cases occur or come to light will they involve any hardship to the boy?

A. I don't see the force of that if, because I think it is almost impossible that they will come to light.

Q. In every province we hear of such cases. A man sees the act being done and the rumour spreads in the whole village and the girl says I was forced, she denies her consent. Would you make any provision for such cases?

A. No, I would not. I would stick to what I have suggested.

Q. And leave those who fall a prey to temptation to their own fate?

A. Yes.

Q. Do you know anything about the system in force about the registration of births in the rural areas?

A. I know it is compulsory. More than this I know nothing.

Q. Is it working satisfactorily?

A. I think so.

Q. Can you suggest any method of improving that system in order that evidence about age and identity may be available in a more satisfactory form afterwards?

A. Well, I think if my suggestion about the *panchayat* is adopted then it may be given a hand in this also.

Q. Is it your suggestion that the village *panchayat* or the town *panchayat*, as the case may be, should be given the authority to register these births and maintain a register of births?

A. Because I assume that the *panchayat* would be representative of the town or the village and therefore no case will remain unreported.

Q. Is there anything wrong in the existing system of requiring the *chowkidar* or *patel* or other village official to register these births?

A. I don't say that it is not working satisfactorily but your question was whether something better could be suggested.

Q. Do you think that a village *panchayat* would be better?

A. I think it would be very much better, because it will be more above temptation than the single *chowkidar* of the village.

Q. Can you suggest anything to remedy this difficulty?

A. I don't know about the villages. In Simla after a year a slip is sent round to give the name and the name of the child is thus registered.

Q. Who sends the slip?

A. The Health Officer is the authority who registers births.

Dr. Beadon: How long after birth does the registration take place?

A. Within three days.

Mr. Kanhaiya Lal: Would you recommend a similar procedure in the case of rural areas?

A. I would, and the name can be recorded within one year.

Q. Is the man who makes the report required to sign the *chowkidar's* book or the register of births or to affix some thumb mark?

A. I don't know about the villages, but here one has to make a signed report.

Q. But in villages people are illiterate. Would you recommend taking a thumb-impression in such a case?

A. Yes, the man should be required either to sign or affix his thumb mark on the particular entry.

Q. Would you also recommend that in all such cases a certificate giving the particulars of the entry in the register should at the same time be issued to the person making the report, so that there may be evidence in two different places, one in the register and one in the possession of the reporting party?

A. I don't see what good it will serve, because the reporting party would soon lose it.

Q. What about the vaccination registers? Are they satisfactory proof of age?

A. I don't think so, because the date of birth is not given. This vaccination register is much less reliable.

Q. Are you aware how long they are kept?

A. I don't know.

Q. Would you recommend a system of registration of marriages giving particulars of the bridegroom and the bride, their names, and their ages?

A. I think, it would be a good idea.

Q. On whom would you place the duty to register these marriages, on the parents of the bride or the bridegroom or on the priest?

A. I think I would put that obligation on the bridegroom or his guardian or parents.

Q. And on the priest?

A. There may not be a priest at all. It is possible to have a marriage without a priest.

Q. Who should be the registering authority in that case?

A. The village or town *panchayat*.

Q. Will they maintain the register of marriages as a permanent record?

A. Yes.

Q. Would you approve of the idea of issuing a certificate as soon as the report is made to provide a double record and obviate interpolations in the register?

A. I think it will be useful.

Mr. Mudaliyar: You suggest that *Gaona* may be penalised. Is it your idea that the last ceremony which takes place before cohabitation may be prevented from taking place earlier?

A. My idea is that the living together of the bride and the bridegroom whether in the house of the bride or bridegroom may be prevented. What happens in these parts is that as soon as a girl is married she is taken away immediately after marriage to the husband's house. She lives there for a day or two but the husband and wife are not allowed to be together. Until *Gaona* which is a purely formal ceremony is performed they are not allowed to cohabit.

Q. Your idea is that the celebration of that ceremony before a certain age should be penalised. That would be a sop to the orthodox people who feel that marriage should not be delayed after puberty, i.e., those who advocate ante-puberty marriages.

A. Yes.

Dr. Beadon: One medical witness told us that usually hysteria and mania were found as a result of early cohabitation. Has that been your experience also?

A. My experience has been that hysteria is a disease which is the result of displacements and gynaecological conditions and therefore I would say, "yes." It is as a result of injuries sustained and gynaecological conditions that hysteria comes in.

Oral Evidence of the Hon'ble Rai Bahadur Lala RAMSARAN DAS, Member, Council of State.

(Simla, 14th September 1928.)

Chairman: What is your status?

A. I am President of the Punjab Sanatan Dharm Pritinidhi Sabha (Pritinidhi means the central body of the Punjab Sanatan Dharm Sabha), President of the Sanatan Dharm Sabha, Lahore, President of the Sanatan

Dharm College Managing Committee and an elected member of the Council of State. I have not been able to send a written statement but I have seen the questionnaire.

Q. What is the usual age at which girls attain puberty in your part of the country?

A. 13 or 14.

Q. Does this differ in different castes, communities or classes of society?

A. It is different in educated classes and urban classes as compared with the village population.

Q. Do the village population get it later?

A. Yes, at 14 or 15.

Q. Is that due to open life?

A. It is due to associations. In the urban areas the girls know very much while in rural areas they are more innocent.

Q. Is there any difference between different communities? For instance would you make any difference between Jats and the other people?

A. I will make the difference so far as the crime is concerned, but not in the case of attainment of puberty.

Q. Is cohabitation common in your part of the country among any class or classes of people (1) before puberty, (2) soon after puberty?

A. (1) Very rare and (2) yes of course in rural areas. In rural areas it is prevalent particularly among Jats because their population of women is much less as compared with men. A few years ago when I had gone on tour in one village in the Chunian Tahsil I found that out of 51 houses males only in 3 houses were married.

Q. That means there would be a tendency to immorality?

A. Yes.

Q. Do you know the general state of affairs in the villages?

A. I have of course depicted a particular village to show the paucity of women. Among Jats polyandry is permissible and that is on account of the paucity of women. It is also on account of economic conditions. They have very small holdings of land and do not want their holdings to be sub-divided. Barring Simla hills polyandry exists.

Q. What percentage would you put in rural areas of unmarried men?

A. I have not gone into these figures in detail but it will be about 40 or 50 per cent.

Dr. Beadon: In your opinion why are there fewer women?

A. Because they are more amenable to disease.

Q. What is the cause of their having less power of resistance?

A. Jats do not rear the girls well. Of course now infanticide has disappeared but they do not care for their girls.

Q. Considering rural and urban areas at what age would a girl in India be competent to give an intelligent consent to cohabitation with a due realization of consequences?

A. At least 14.

Q. You think that in the Punjab girls are good enough to give an intelligent consent at 14?

A. Yes.

Q. What would you put the Age of Consent at?

A. 14 within marriage and 16 outside marriage.

Q. What about the general knowledge about this law of 13 years for Age of Consent? Do you think it is known in the rural areas?

A. It is known but it is ignored. Jats know more of law than we people in the urban areas. I have figures as follows from the Police Ad-

ministration Reports of the Punjab. These are from all the 29 Districts in the Punjab.

Year,	Number of cases of rape.	Number of girls kidnapped or abducted.
1921	122	526
1922	167	795
1923	177	798
1924	149	762
1925	178	808
1926	208	980
1927	217	893

Chairman: Do you mean to suggest when you say that the law is ignored that it has been ineffective?

A. These figures are not a proper guide. I cannot give you a definite idea at what age the girls were abducted.

Q. Do you mean to say that the law has been ineffective?

A. Yes because all those habitual offenders for instance do not care and particularly Jats do not mind the risk.

Q. Is not the fear of punishment so very much felt in the Punjab?

A. It is not a deterrent factor particularly among the Jats in the Punjab.

Q. Would you like to have a law penalising marriages before a certain age?

A. I will prefer to have the first two, i.e., by postponing the consummation of marriage and by stimulating public opinion in that direction instead of marriage legislation.

Q. Would you postpone the consummation of marriage?

A. We have a custom of muklawa all over the country. Even those people who are more orthodox and who want to celebrate the marriage at 12 or 13 they can do that because muklawa can be postponed and consummation can be penalised by law.

Q. Your view is that muklawa should be penalised and not the marriage. Is that so?

A. Yes.

Q. In other parts of the country corresponding to muklawa is garbhadan ceremony. It is a ceremony just before consummation. Supposing we penalise muklawa or *gaona* and people do not have muklawa or *gaona* but have consummation in their own house, would not the law be ineffective?

A. What will be your source of information that consummation has taken place?

Q. None; but marriage is a public thing and we can penalise it.

A. Supposing people do not marry as they do in Malabar. They have *Sambandam*.

Q. Do I understand that you will have no marriage legislation like *Sarda's Bill*?

A. I am afraid *Sarda's Bill* or any other such like measure may or may not pass through legislature.

Q. Would you rather prefer that than raising the Age of Consent?

A. I will prefer the Age of Consent because in the Punjab villages the age at which girls are married is between 16 and 18 except in the hills. In my own family and in other families there are cases in which girls have not been married till they attained the age of 18 or 20.

Q. May I know what is your caste?

A. I am a Kshatria.

Q. Are you at all in favour of Sarda's Marriage Bill? Do you think that will serve the purpose?

A. I will go in for an age limit of 12 or 13 for girls and for boys 15 or 16.

Q. Do you think 14 and 18 is a higher age?

A. I do not think that Bill will be carried in case he sticks to it. It is likely to be carried if 12 or 13 is agreed to.

Q. Considering the tendency in the Punjab to marry girls beyond 16 if we penalise marriages up to 14 or 16 would that be a proper thing?

A. In the Punjab nobody will feel it but in other parts of the country it might be felt.

Mrs. Brijlal Nehru: From your general knowledge of the Punjab could you tell us what was generally the age of girls kidnapped in the Punjab?

A. Generally it was from 12 to 16.

Q. Then if the Age of Consent outside marital relations is increased it will give some protection to the girls.

A. Yes, and that is the difference that I make in the marital and the non-marital age.

Chairman: Do you consider that marriage of girls below 16 is an evil that affects the women and their progeny?

A. It is an evil but the only way to stop it is as I have suggested by propaganda and by postponing the age of consummation.

Dr. Beadon: Does it cause deterioration everywhere?

A. Yes, but it is in case a girl is not developed.

Q. Can you tell us any cases in your experience in which early consummation has had this effect?

A. I know several girls who were attacked by consumption.

Q. How soon after marriage?

A. Say after the second or 3rd child birth.

Q. Can you tell the age of the girl?

A. The girl confines at about 13 and two or three years later she is attacked by phthisis.

Q. Supposing the girl married at 18; would she be likely to be attacked by phthisis?

A. No, not so much.

Q. Did you see all those cases yourself?

A. I have seen many more perhaps more than a dozen.

Q. Can you tell us anything about the children in those cases?

A. The children are generally weaklings. In all cases the children were sickly except in two or three cases in which they were fed on artificial food.

Q. Some people have told us that there are mental disturbances?

A. Not to my knowledge; but of course there is not enough milk for the baby and the milk is defective.

Q. Have you ever noticed any mental disturbance and the woman becoming half mad?

A. No.

Mrs. Brij Lal Nehru: Am I right in understanding that when this Age of Consent Bill came before the Council of State you opposed to it?

A. I do not remember but I might have been opposed to it on orthodox grounds. I represent orthodox people and I voice their feelings.

Q. You do not oppose it now?

A. My objection is only to the raising of the age of marriage and not to the age of consummation.

Q. Does it mean that you oppose the raising of the age of marriage not on personal conviction but to give support to the orthodox view.

A. That is a very doubtful point. Even religious authorities differ, some say that 4 years after the girl attains puberty she can be married, but I do not take up the controversial matters. Of course orthodox opinion is that girls are not to be married above the age of 12.

Q. Is that the view held by your Sanatan Dharm Sabha people?

A. Yes.

Q. Do you support it?

A. Yes. I would raise the age of marriage to 12 but I would raise the Age of Consent to any limit.

Q. Would it not be difficult to postpone it to the desired length of time if the marriage takes place early?

A. Generally Muklawa is given 2 years after marriage in the Punjab and even if a girl is married at 12 the consummation will not take place till 14.

Q. There are certain communities for instance the Muhammadans among whom there is no Muklawa or *Gaona* ceremony. In Bombay Presidency, there is no ceremony corresponding to *gaona*, so, do you think it will be possible to penalise *gaona*?

A. I hear in that presidency you have got two ceremonies, the Garbhadan ceremony and the marriage.

Q. There is no Garbhadan ceremony, there is only the Seemanth ceremony. There is no ceremony performed just before the girl is sent to the house of her husband. So there would be no use penalising the Muklawa or the Garbhadan ceremony and the only effective way would be to raise the Age of Consent. Do you agree?

A. I agree to that in the case of people who have not got the Muklawa ceremony. In the case of Muhammadans there is no religious objection. In the case of other religions, there is a religious ruling so far as marriage is concerned.

Q. The Muhammadans say it would be against orthodox principles to fix any minimum age for marriage, but so far as consummation is concerned, there would be no objection, either on the part of Hindus or Muhammadans. Am I right?

A. Yes.

Q. And what would you fix as the Age of Consent in the case of intra-marital relations?

A. I have said I shall fix the Age of Consent for intra-marital cases at 14 and for ultra-marital cases at 16.

Q. A girl is a minor till she is 18 and according to civil law a minor cannot enter into a contract. That being so would you fix the Age of Consent in ultra-marital cases at 16 or 18?

A. Among Hindus marriage is not a contract.

Q. I do not say that marriage is a contract. Until 18 a girl is a minor and according to law a minor cannot enter into a contract or dispose of property. In view of the fact that a girl is a minor till she is 18 and cannot enter into a contract, would you be disposed to raise the age in ultra-marital cases to 18?

A. I will raise it, but the minimum age should be 16 for the present.

Q. You have said that the Jats in the Punjab know the existing law about the Age of Consent. Where has their knowledge of the subject been derived from? Has there been any publication on the subject?

A. The Jats are people who are very litigious and go to courts very often. So they know about these things.

Q. Do you think that in the Punjab there is any dissatisfaction with the present law, and do the people want to raise the age in the interests of the society?

A. There is certainly a desire among the educated classes.

Q. You have given us figures about crimes of seduction, rape, etc., in the Punjab. From these it appears that such crimes are frequent in the Punjab. Is that so?

A. These are the figures which have been reported. I think the actual crime is much more than you find there.

Q. Do you attribute it to scarcity of women in the Punjab?

A. Yes, among the Jats. Abduction is confined to Jats.

Mr. Kanhaiya Lal: Not to Muhammadans?

A. There are Muhammadan Jats as well. There are all kinds of Jats. There are Jats amongst Hindus, Sikhs and Muhammadans.

Q. How many per cent. of them are Muhammadans?

A. In the central districts 3rds are Muhammadans; and about 1/3rd are Sikhs. It is only a conjecture.

Chairman: Do you know of any cases under rape against a husband? Have there been any cases during the last 12 years?

A. I have not heard of any such cases. Besides it is very difficult to hear about them. Cases like this are not exposed.

Q. Do you know of any cases where a husband has had consummation of marriage before 13, the age of consent in marital cases?

A. There might have been cases, but they have not come to court and I have not heard of them. In the Punjab the age of marriage has already been raised.

Mrs. Nehru: Does kidnapping take place in the case of married or unmarried women?

A. The rape cases are mostly of married women; kidnapping of both.

Mr. Kanhaiyalal: Are rape cases committed by youngmen or adults?

A. By grown-up men, mostly by Jats.

Q. To protect these girls from cases of kidnapping, rape, or seduction, would you be prepared to fix the age of consent sufficiently high, say 18?

A. I said 16, but I will go to 18 in non-marital cases.

Q. And in marital cases 14?

A. Yes.

Q. You are probably aware that according to orthodox ideas, *Goana* takes place generally in odd years, that is in the first year, third year, fifth year or seventh year after the marriage.

A. The general custom is 2 years after marriage. It usually takes place in the third year.

Q. In that case if the marriage takes place at 12, the *Goana* will take place in the 15th year.

A. Of course the girl will be completing 14 and just beginning 15.

Q. Does it occur frequently that *Goana* is postponed till the 7th year?

A. Owing to the economic condition of the people, sometimes *Goana* is deferred, but even then it is not deferred till the 7th year but only up to the 5th year.

Q. In that case if we have a higher age limit than 14, would it not be generally acceptable?

A. I hold a different view. From the reports that we receive from the various girls' schools, we find there have been cases in which girls develop the sexual desire at an early age and in cases in which they have been allowed to grow up to 16, there have been some evil consequences.

Q. Does it happen in schools which are purely 'girls' schools or in mixed schools?

A. We have no mixed schools in the Punjab. Only in the case of children we have got mixed schools.

Q. But what about those girls who study in Colleges or Universities?

A. But it is the school-life we are talking of. We have however got Women's Colleges in the Punjab as well.

Q. My object was to show that the sexual desire is very largely developed by reason of the environments and the surroundings?

A. I have said so.

Q. If that is so, and these girls are educated exclusively in Girls' Schools and Girls' Colleges, would not the danger that arises from environments disappear?

A. In case they are all boarders, not otherwise.

Q. I suppose you are aware that at the All-India Sanatana Dharma Conference held at Allahabad during the Magh Mela under the Presidentship of Pandit Madan Mohan Malavia it was decided that the age of consent should be fixed at 16. Would you accept that resolution?

A. I have already said that as far as consummation of marriage is concerned, there is no religious objection to it.

Q. Are you then prepared to accept 16 as the minimum age for consummation?

A. Yes; if you can increase the age, so much the better. I have suggested 14, because if you go by stages, and not all at once, you will succeed much better.

Q. I suppose the resolution of the Sanatana Dharma Sabha, fixing the age of consent at 16, will be generally accepted by the orthodox people in the Punjab.

A. Yes; as far as consummation goes, there is no religious objection. Moreover, in the Punjab the age of marriage is now between 16 and 18.

Q. Would you prefer 16 to 14 for the age of consent?

A. As I have already said there is that danger of the girls desiring consummation.

Q. There is the other danger, namely, a high mortality among infants and mothers, tuberculosis, and other diseases which weaken the constitution. And in view of that danger would not it be better to have the later age limit, namely 16?

A. But the percentage of the girls I have mentioned is not very large. In Punjab the development of a girl of 14 is equal to a poor girl's development at 16. When a girl is fully developed, perhaps it may not serve the purpose which you have in view in case the age of consent is raised to 16. We must have 14 first and see its effect. But personally I have no objection to 16. I married my girl when she was 17.

Q. Another view is that it is easier to judge the age of a girl when she is 16 than when she is 14 when disputes about age arise. Would it not therefore simplify matters if we fixed the age at the point beyond which there can be no possibility of dispute in case of disobedience of the law?

A. You mean medical opinion. But it will be very difficult to distinguish between a girl of 14 and a girl of 16 in case the girl of 14 is fully developed. These are matters of discretion and matters of opinion.

Q. If medical opinion says that the age may be fixed at 16 for purposes of surer determination, would it not be better in the public interest and in the interests of justice that that age should be adopted?

A. You are after a theory and we are after a practice.

Q. What is the percentage of cases where the desire matures at 14?

A. I cannot say.

Q. Would you make the Police take cognisance of these cases, or would you make them non-cognisable?

A. My own opinion is that in marital cases there should be no Police interference. I will make these cases non-cognisable.

Q. To whom would you give the authority to start the prosecution?

A. To social reform organisations in the country.

Q. Would you give it to the parents or guardians or the relations?

A. Yes, I would do that in the beginning and later on give it to the Societies. I would give it firstly to the parents, secondly to the relations and lastly to the societies.

Q. Would you constitute Panchayats for the purpose in every locality so that they might look after these cases and watch them?

A. Even now we have these organisations in the Punjab, and they may be revived and developed.

Q. There is a complaint that the law in this matter has been ineffective and that prosecutions have been very few. Can you suggest any method of making the law more effective?

A. That can only be done by the advance of public opinion.

Q. And will no amount of power given to Women organisations or social reform organisations to watch and prosecute serve the purpose?

A. Of course it will to some extent.

Q. What is the punishment you would suggest in marital cases?

A. For the first offence fine, and in cases of recurrence imprisonment.

Q. Would you be content with a fine in cases where there is a disparity of age, for example where the husband is 30 years and the girl 13 years and where severe injury has resulted to the girl?

A. In such a case I will give a harder punishment.

Q. How is the system of registration of births working? Can you suggest any method of improving that system?

A. In Punjab the system of registration of births is working satisfactorily, because in cases reports are not made, there are prosecutions.

Q. We have been told by certain witnesses that once you send the husband to jail, there will be a complete estrangement between the husband and the wife, and when the husband comes back from jail he might discard his wife and the wife would then be ruined. Do you think so?

A. Yes, there is a great deal of truth in that. That is why I said that fine is enough.

Q. Except in cases of severe injury or in the case of grown-up men.

A. Yes.

Q. Would you advocate corporal punishment, flogging?

A. I am against that.

Q. Would you recommend compulsory registration of marriages?

A. There again we enter into contracts.

Chairman: No, it is not a question of contract. It has been suggested that if marriages are registered after they are celebrated, and the ages of the couple are recorded in the registers, there will be a danger in defying the law and consummating the marriage before the age fixed.

A. I am against registration. My grounds are that it is purely a sentimental question with many people. They will consider that this is an intrusion on their religious rights.

Q. It is only a report of the marriage.

A. Yes, but I would leave it to the social organisations. I want to add one more thing to what I have already said. In the Punjab the Mukhlawa ceremony is performed along with the marriage. But of course otherwise also it is done even in cases where the girl does not attain

age. In case we penalise consummation before a certain age, they will stop consummation and revive the Muklawa ceremony in its old form again. It is practically synonymous with the consummation ceremony.

Written Statement, dated the 14th August 1928, of Dr. (Mrs.) M. C. SHAYE, L.M. & S., C/o Captain E. D. Shave, I.M.D., Mayo Hospital, Lahore.

With reference to your No. 42-A. C. C., dated Simla, the 18th July 1928, I have the honour to submit the following replies to your questionnaire:—

1. Yes. Many parents of my patients have told me they would like to marry their daughters at a later age, but dare not defy custom, and women themselves married at an early age, worn out before 30 with child bearing and nursing, have spoken to me very bitterly of their lot.

2. (a) None.

(b) It is of vital importance that the present age of consent be raised. The terrible suffering of child mothers both physically and mentally unfit for their ordeal and the early wreck of womanhood resulting in premature ageing and a hopeless outlook on life. The children of these immature mothers are often weakly at birth and suffer further injury from the absolute inexperience and ignorance of their mothers.

3. I do no Medico-legal work, so cannot answer this question.

4. (1) and (2) Yes.

(3) Yes—in the Punjab girls are marrying later now than a few years ago.

5. Between 13 and 14 generally. In a few cases between 12 and 13.

6. Please see my answer to question 3.

7—8. I am not in a position to answer this question.

9. I most certainly do not. The very earliest age is 16 and I should personally favour 18 years, as giving a girl a fair chance to mature both physically and mentally.

10. This would depend on her upbringing and circumstances. The average girl of 13 would certainly not have a due realization of the consequences.

11. I know of no cases before puberty. I have attended in confinement girls between 13 and 14 years of age, who have been nearly driven mad by their ordeal and whose offspring in some cases have been puny and weakly.

12. Yes, both for high maternal and infantile mortality. I also am emphatically of opinion that it affects the physical and intellectual progress of the people.

13. Yes, people of the upper and middle classes favour an extension of the age of consent, and here and there amongst the poor even one hears similar views expressed.

14. No.

15—16. I do no Medico-legal work.

17. Yes. With regard to punishment, sentences should be deterrent in both cases. Those for extra marital being heavier than those for marital offences.

18—19. I have no suggestion to offer.

20. I am of opinion that fixing a higher age of consent would be more effective. I think this would be in consonance with general public opinion in this part of the country. The minimum age of marriage would automatically adjust itself with the passing of such a law.

21. I would prefer to rely on penal legislation as the progress of social reform by means of education and social propaganda must of necessity in India be very slow and in the meantime incalculable suffering is resulting from the present state of affairs.

I am agreeable to be examined orally, if necessary.

Oral Evidence of Dr. (Mrs.) M. C. SHAYE, L.M. & S.

Lahore, 17th September 1928.

Chairman: Will you please let us know how long have you been practising?

A. For the last 20 years. I graduated at the Grant Medical College, Bombay. Then I went to Kathiawad, Rajkot and was there for four months and then I was in the Lady Aitcheson Hospital for 2 years. I was again in charge of the Lady Aitcheson Hospital for five months during the War until another incumbent came up. I have been in regular practice for the last 20 years. I was thus first at Bombay, then at Rajkot, Kathiawad and then came up to Lahore.

Q. In your practice have you done labour cases only among the Hindus or among the Mohammadans also?

A. Among both.

Q. Would you be able to say how many cases you have to treat of child births and confinement?

A. About 50 or 60 a year.

Q. Would you be able to say what proportion of child mothers, that is to say, before 15 you get of those 60 cases?

A. They are fewer now than in the earlier days of my practice. During the last 5 years there have been decidedly less cases. Early motherhood below 15 is becoming less and less.

Q. Would you put it at about 12 cases a year?

A. Yes, about that.

Q. In those cases that you treat what effects do you find either on the ladies themselves or their children on account of early motherhood?

A. Most of them are not ready for the strain. It is a terrible ordeal to go through and it is a tremendous shock to their nervous system apart from their general physical development.

Q. Would you go so far as to say that it affects the vitality of the women concerned?

A. It depends upon their development. If the girl is a fairly mature one it does not much affect the vitality but if the girl is not fully developed then it makes a tremendous difference.

Q. What is your general idea about any evil effects on account of early motherhood on the lives and progeny of women in cases other than confinement?

A. There is no girlhood at all. They go in life early.

Q. That may be the social aspect of the question. But how does it affect their health or the health of the children?

A. I think it must affect their health prejudicially. It does make a difference, because they are old woman at 30. They have had no girlhood. They have had to pass through all the suffering at such an early age and all the grave consequences that follow after. All this makes a great difference in a woman's life.

Q. Could you mention any prejudicial effects on these women who became mothers early in connection with other cases besides confinement, and bad injury, or permanent curvature of the back and other diseases like hysteria?

A. Hysteria is very common.

Q. Would you put that to the effect of early motherhood?

A. I think so. Another evil resulting from this is Osteomalacia, but that is not completely due to early motherhood. Unhealthy housing is one of the causes of this disease.

Q. Supposing in the cases you have dealt with girls were to begin motherhood at 18, would there be any marked improvement?

A. I think it would. In medical work one does come across cases of those unfortunate girls who are between 13 and 14 and they suffer from terrible diseases and cannot have any children. They are therefore doomed.

Mrs. Nehru: How is marriage possible for a girl of this class?

A. Sometimes it is possible to arrange for a marriage. There are few who escape that life. I know of a Mohammadan girl of this class and there is a chance for her marriage and removal from this life altogether. She cannot have any children and she is doomed. The Age of Consent law will prevent that kind of thing happening.

Q. You have said that there is a high maternal and infant mortality in this province. Would you put that to early motherhood?

A. Yes. In these cases of under-developed girls the mortality is high. It is not actually as a result of labour troubles but it is sepsis afterwards which is the cause of this.

Q. Would you put this as one of the chief or potent causes, because you will recognise that there are other causes also which contribute to infant and maternal mortality?

A. Yes, it is a very big cause.

Q. In answer to Question No. 20 you have said that fixing a higher Age of Consent would be more effective than fixing a minimum age of marriage. Do you think that early motherhood will be stopped in that way?

A. Will not the age of marriage automatically adjust itself?

Q. Among the Hindus marriage takes place only as a ceremonial between 10 and 12. With that knowledge would you say that there would be less mortality if the marriage before a certain age is penalised or would you still think that the Age of Consent should be raised?

A. I think I will still have the age of consent raised.

Q. It has been said that such cases are hardly detected. Nobody comes forward to make the complaint. All are interested for obvious reasons. Some people say it has remained a dead letter and it would always be a dead letter. Therefore the minimum age of marriage should be fixed.

A. Yes, that would be the safest.

Dr. Beadon: You said just now that there are fewer of these young mothers below 15 now. What in your opinion is the cause of that?

A. Sending the girls to schools and colleges. I treat generally the middle-class people.

Q. Has that been your experience with regard to Mohammadan girls also?

A. Mohammadans are also beginning to send their girls to schools.

Q. In answer to Question No. 1 you have said many parents of my patients have told me they would like to marry their daughters at a later age. Is that the mothers or the fathers who tell you that?

A. It is the mothers. I have to deal for the most part with mothers.

Q. Have you met any cases in which early consummation has been followed by any grave injury?

A. I have had one or two cases. One girl was between 13 and 14 and the other was between 14 and 15. Their children were very much under-sized.

Q. I don't mean confinement cases. I mean cases of consummation.

A. I have had only one case like that very badly lacerated. I had to put in several stitches. The child was between 14 and 15. I have found generally that girls of 14 have stood the ordeal fairly well.

Q. Some people tell us that if a girl becomes pregnant early she has very easy labour and the child is also quite large.

A. It depends upon the physical development and that makes the difference.

Q. What is your general opinion of the average labour? Is it fairly easy labour or hard labour?

A. So far as their fortitude goes Indian women are very patient. They seldom complain about sexual troubles. But I find that these young mothers stand the ordeal of labour very badly.

Q. What is your opinion about the children of these mothers?

A. As a rule they are very weak and under-sized.

Q. In your experience have you found that early motherhood tends to cause lack of vitality later on?

A. It all depends whether they suffer from sepsis and diseases like that, in which case there is a loss of vitality.

Q. You say hysteria is very common. Do you think it is more common in young women than in grown-up women?

A. Especially among young women between 17 and 19.

Q. One witness has told us that there was a great deal of mental apathy among these young mothers. Has that been your experience also?

A. I don't think there is any definite dullness. That depends upon the calibre of the man and the woman. The man has also got to do a great deal with it.

Q. Supposing one girl is being married early and the other one is being married later, do you think the former will have no interest in life?

A. Yes, they do lose interest. They are apathetic. They suffer a lot. But there is no definite dullness of the mental capacity.

Q. You are emphatically of opinion that early consummation and early maternity affects the physical and intellectual progress of the people. How is that?

A. Young mothers have to look after their children. They have no experience. The joint family system is breaking. The husbands go out to earn a living. The whole burden falls on the wife. Economic conditions are bringing this about.

Q. Is that in the towns?

A. My work has been in the towns. I have not had much to do in the districts.

Q. How long you keep these labour women in?

A. 10 days.

Q. Do you find that they are willing to lie in for 10 days?

A. Yes.

Dr. Beadon: Do you find that among these patients young mothers get more displacements than other women?

A. Yes.

Q. Do you find that these displacements take place as a result of child birth or as a result of early consummation?

A. I think it is always as a result of child birth.

Q. Do you consider that displacements are the cause of hysteria?

A. I rather think that hysteria is caused by sterility.

Q. Do you think young women suffer more as a result of displacements than elderly women?

A. Yes.

Q. Even when they do not seem to have bulky organ?

A. Yes, young women seem to notice it more and come up with more complaints.

Mrs. Nehru: You suggest that although women are not in favour of early consummation of marriage yet they do it for fear of public opinion?

A. Yes.

Q. Whose public opinion is that? Is that of the women themselves or of the men?

A. I mean general social opinion.

Q. You think some women are in favour and some against it?

A. They are against it when their own children are concerned and the majority of them do it when somebody else's child is concerned.

Q. In answer to Question 7 you have said that punishment should be deterrent. What is your idea of a deterrent punishment. Is not the punishment at present provided deterrent enough? Have you ever come across any case where even this punishment has been awarded?

A. I have not done any medico-legal work.

Mr. Mudaliyar: Some witnesses have stated that even when girls are married at 13 or 14 their progeny have been fairly healthy and that infantile mortality is just as high when motherhood is reached at 18 or 19 years. Do you agree with that?

A. No.

Q. Statistics have been placed before us where it has been suggested that infant mortality or maternal mortality is just the same in the latter case as in the former.

A. No. A few girls of 13 or 14 who are well developed may be able to stand but the average girl of that age cannot.

Q. Do you think there will be a little advancement in the health of the girls and the health of their progeny if the age were fixed at something below 18 or would you advocate 18 as the minimum age?

A. I advocate 18 because girls should have a period of girlhood which is very important.

Q. Have you considered the average duration of life of the people in India before advocating what you call girlhood before motherhood? They say it is somewhere between 23 and 30.

A. The life of the population might be increased if the marriage takes place later.

Mr. Kadri: It has been said that in the Punjab girls attain puberty much earlier than in other provinces. What is your experience about this?

A. I have no experience. The average is between 13 and 14.

Mr. Kanhaiya Lal: You favour 18 years in both intra-marital and ultra-marital cases?

A. Yes.

Q. It is said that if we penalise marital cases, the person to be punished would be the husband of the girl and the punishment of the husband would bring suffering to the girl?

A. Then raise the marriage age: but my point is to give these girls the period of girlhood which they enjoy in other countries.

Q. You are probably aware that there is considerable opposition among the orthodox people to the undue postponement of marriages?

A. Yes.

Q. You are also aware that there is a great desire among people generally in India to have their daughters settled early in life?

A. Yes.

Q. In that case don't you think there will be considerable opposition if the marriageable age is fixed as high as 18?

A. There will be considerable opposition that we shall be doing this for the good of the girls.

Q. As there will be considerable opposition to raise the marriage age to 18 or even to 16, it is feared that the legislature may not be able to do it. Would you keep the age of consent at 18?

A. If people are not able to think for themselves then those who do must be strong.

Q. But the legislature has to take its support from public opinion as it exists at present?

A. I would force a measure like that in spite of public opinion.

Q. How would you make the law effective?

A. The offenders must be punished.

Q. Any punishment to the husband will lead in the first instance to considerable suffering on the wife. The husband will feel that the wife has been responsible for his punishment and he might feel so much annoyed that when he comes back he might desert her and take another wife or do anything that might ruin the girl's prospects for ever. Instead of doing good you will be doing a permanent injury to the girl.

A. Then you must have a law that marriages should not take place up to a certain age.

Q. Considering the matter from the practical standpoint and the circumstances as they now exist in the country, what is the age that you would recommend?

A. Compromise seems to be impossible in a matter like that.

Q. You have said in your answer that the very earliest age is 16. Would you recommend 16 as a first step towards the solution of this difficulty?

A. If it is impossible to get 18 through, only then I will recommend 16.

Q. Do you think if the age is fixed at 16 there will be any real difficulty in determining the age in cases where questions of consummation before a prescribed age arise?

A. No, age can be determined by X-Ray.

Q. You think that with the help of X-Ray you will be able to determine the age more accurately?

A. Yes, cases are being decided in the hospital every day.

Q. If you raise the age don't you think breaches of the law will occur which will not be discovered and there will be nobody to bring them to light?

A. There would be some that will come to light.

Q. Who are the persons who will bring the offenders to light?

A. If the existence of the law is made known everywhere cases will come to light.

Q. Is there anybody to bring them to light? Would medical women be able to help in this matter, that is to say report the cases that come to their notice in their professional capacity?

A. Yes, I think they would do.

Q. Will they be willing to do it at the risk of their practice and unpopularity?

A. That is a great difficulty.

Q. In cases of this character would you require every person who comes to know of the crime including medical men and women to report?

A. Yes, to make the law effective you will have to do that.

Q. The law can protect the doctor but he or she will be deprived of practice?

A. Yes.

Q. Can you suggest any other way to bring these cases to book? Would you like to give that power to women's social reform societies that might exist in the country?

A. Yes, I think it will be very good and there will be no question of the unpopularity of one individual.

Q. But the evidence that will be available to the medical women will be of a more definite character than the rumour that may reach the social reform society?

A. In such cases the doctor can be called in to give detailed evidence.

Written Statement, dated the 23rd August 1928, of Mr. BHAGYAD DATT, Superintendent, Research Department, D. A. V. College, Lahore.

1. Yes. From the earliest times sexual intercourse with a girl of less than 14, either by a husband or by another man is not regarded as good. I will refer to Rigveda I. 1267 and Gobhil Grihya III 53 where sexual intercourse with a girl who has not got sufficient hair on her private parts is looked with disapproval. This is upto the age of 14. The present law which allows marriages before a girl is of 13 or 14 years can never check thousands of illegal cases which are happening daily in hundreds of houses. In families where early marriages take place mothers are seen helping in the breaking of law.

2. (1) Ignorance, religious mania, political degeneration and so on.

(2) The Government will remove a perpetual shame which is on it in the present century of civilization. In matters which are medically supported, no value should be attached to the cry of the ignorant or seemingly wise people.

3. No. The stopping of child-marriage will prevent one kind of crime, but the other cases which generally happen cannot be fully stopped by any ordinary measures. Compulsory female education with a great stress on physical culture is one way of checking the evil.

4. The amendment of 1925 has not been effective in the least. There has been no change in the state of affairs. Only one thing can help the present law as regards marital affairs. The girl should never go to the house of the husband before that age. But this is humbug. The only remedy is the total stoppage of marriages of girls before 14.

5. After 14 years the girls attain puberty. There is no question of caste. This age depends on climate and the food eaten. In many rich classes even, where girls eat poor food the puberty may come after 15 or 16 even.

6. It is not so common outside of Lahore (in the inner city some rare cases happen) where I put up. But in the Punjab taken as a whole I have heard during my tours that all types (1) (2) (3) happen commonly. No cases come to Court.

7. No. It is all due to ignorance. In all (about 25 in number) the Grihya Sutras, Dharma Sutras and Smritis (about 60) marriage before 12 is thoroughly discarded. Indian medical works disallow cohabitation, when a girl is less than 16 years of age. Even the vast literature on sex

which is found in Sanskrit does not allow cohabitation before 14 years. If some people attribute it to religious injunction, it is only the pseudo religion, which sprang up in the country in the last 800 years.

The second part does not arise.

8. I can say that in the Punjab, the cases where the garbhadhan ceremony is performed may be counted on fingers. Wherever it is performed, it is always after a sufficient time of puberty.

9. No. Physical maturity generally takes place between 15 and 18 years of age. Differs with circumstances.

10. Not less than 15. Before this age 60 per cent. of the girls do not know the consequences.

11. (a) A girl of 12 was married. She was very tender. After her first menses she was pregnant at about 13½. A child was born. After some time an abortion took place. The girl died of tuberculosis at 16½.

(b) A girl was married at about 11. She gave birth to a child at about 17. The child died on account of the position of the womb being thoroughly upset by early cohabitation. She became unfit for further child-production. The two cases are from a rather advanced society.

12. Oh yes. There is not the least doubt about it. Among my students, the cases have been many, where sons of early marriages are dull-headed. I remember at least 100 cases in Lahore and Amritsar where young men lost their wives at the times of child-birth, for the mothers due to early marriage were not sufficiently strong. Exact references are not in mind and hence are not recorded under (11).

13. In big cities and amongst educated classes people have begun to dislike early marriage. They care little for the consent or marriage law.

14. Yes, in many a place it is the ladies in the house who press for it.

15. I have no connection with the Bar, so can't say.

16. Although not in my domain, but I hope little.

20. No. Only the fixing of the minimum age of marriage can help in this direction. Public opinion is the opinion of its religious and political leaders. Here some of the religious leaders may be rather mischievous (excuse me) and everything may go wrong. Otherwise the people will like the fixing of marriageable age.

21. I have very little faith in social propaganda which will take centuries for a reform. When the world is ahead of us in so many fields already only law should put a stop to all these things. The great Manu said "It is the punishment which sets people right. Law, therefore, should be in active working in this respect".

Oral Evidence of Mr. BHAGYAD DATT, Superintendent, Research Department, D. A. V. College, Lahore.

(Lahore, 18th September 1928.)

Chairman: With regard to your answer to Question (1) would you be able to give us the texts in original?

A. Yes.

Q. Are you in favour of fixing a minimum age for marriage?

A. Yes.

Q. Apart from any legislation of that kind, do you think that, there is any way of making the present law regarding the Age of Consent, effective?

A. I do not think so. I have travelled throughout northern India as a preacher, and, from my practical experience I can say that nothing can

check the existing state of affairs, and, make the law effective. The only thing that will be effective is a law penalising marriage.

Q. Do you mean something like Sarda's Bill?

A. Yes.

Q. Are you decisive in your opinion about ignoring the orthodox view? Will you give preference to medical opinion over the orthodox view?

A. Yes. In ancient India in these matters medical opinion was the opinion that counted. I have got with me a passage from Susruta, and that has been corroborated by Kattak Grihya Sutra and Erotikos.

Q. But do you not realise that in ancient India the Srutis and Smritis were given preponderance over the science of Ayur Veda.

A. But in matters relating to producing children, etc., the science of Ayur Veda was given preference though in other matters it may not be so. To-day I found that the same thing in the Kattak Grihya Sutra which I have published in my series. There it is stated that a girl should observe Brahmacharya for 10 or 12 years beginning generally from the 5th year.

Q. How do you know that it commences from the 5th year?

A. There is another passage in the same book in which it is stated that males should observe Brahmacharya for 12, 24, 36 years, etc. Now since 12 is the minimum age for a male to commence the study of the Vedas, 12 is the age at which a boy's Brahmacharya should begin. So also a girl's Brahmacharya does not begin from the first year but from the 10th year at the least or from the 5th year at the most. I think that orthodoxy will have to surrender to this. The quotation I refer to is Kattak Grihya Sutra, 7, 67.

Mr. Kanhaiya Lal: How is it that this Grihya Sutra has hitherto been so little known?

A. I have published it for the first time. The original is in Kashmiri.

Dr. Beadon: In your answer to Question 11 you give two cases. Are these in your personal knowledge?

A. Yes, among far-off relations of mine.

Q. When did these happen?

A. About 2 years back.

Q. Do you think that in these two cases apart from early marriage there were other causes like poor hygienic conditions, etc.?

A. I do not think so. One of the girls was living in Simla in a good house, with the result I have stated.

Q. Can you give us any other cases of early marriage which ended badly?

A. No, not in my personal knowledge.

Q. You say in your answer to Question 12 that sons of early marriages are dull-headed. But we have heard from others that children born from early marriage are more clever and intelligent than others. What have you got to say about this?

A. Such things ought to be examined in hospitals and statistics taken. But I am a teacher, and I ask how many of students are married, how many are unmarried, how many are the sons of persons who had been married early, etc. What I have stated is from my experience of 12 years.

Q. How many students generally pass through your hands?

A. About 400 students a year or about 5,000 students during these 12 years.

Q. Supposing one child is born first as the result of early marriage, and then are two or three more children, do you think that the second child is better than the first child, the third child better than the second and so on progressively?

A. These cases ought to be examined in hospitals. We teachers cannot be making enquiries of the kind. We should be cautious.

Mrs. Brij Lal Nehru: Do you think that marriages of many girls are celebrated in the Punjab before they are 13?

A. Yes; in the villages.

Q. In towns?

A. Rarely, 10 years back it was the general case. But since the prohibition of married boys from admission in a number of schools, these cases are disappearing in the cities. We do not admit married students in the D. A. V. School. And this year we have extended it to the First Year Class also.

Q. Have you got this restriction in the girls' schools also?

A. No; with them the case is different.

Q. What in your opinion is the cause of the law regarding the Age of Consent being ineffective?

A. Ignorance.

Q. Do you think that if means are taken to make it well known to the people it will be effective?

A. I mean by ignorance not that the people do not know the law but they are ignorant of the effects of their action, namely, early consummation.

Q. The fact that marriageable age is rising in the towns of the Punjab shows that public opinion is growing in favour of late marriages, and, consummation of marriages. If it is so, why have the people not made use of the existing law?

A. It has taken 50 years for the opinion in favour of late marriages being created amongst the educated classes. If the whole country is to be educated about the law, it will take three centuries.

Q. Do you think that any changes in the provisions of the law are necessary to make it effective?

A. No. I do not think any change will improve matters.

Q. Supposing the power to make complaints is given to social reform bodies, will it be effective?

A. No; that will only create a great disturbance and will lead to the unpopularity of the social reformers.

Q. If public opinion is not strong enough to back such social reform bodies, who then will undertake to make complaints?

A. There are certain things for which Manu has given the solution, and this is one of those things. The solution is "It is the punishment which sets people right. Law, therefore, should be in active working in this respect".

Q. But punishment is provided even now.

A. But that will not do. The age of marriage will have to be settled.

Q. Do you think that because the punishment is high people do not bring the cases to light?

A. No.

Q. How do you then reconcile your statement that public opinion is growing in favour of a higher age limit but at the same time it does not want the existing law to be effective in spite of punishment being reduced?

A. By public opinion I mean 10 per cent. of the city people or about 7 per cent. of the educated people. In other words public opinion has not advanced.

Q. Cannot these 10 per cent. or 7 per cent. take up the work with the help of the law?

A. The Hindus and Muhammadans are one in this¹ respect. Very few of them care for the public good. This is so because the economic conditions are bad in the country and they have got to pay more attention to them.

Q. Do you think that if the custom of Goana is revived again and enforced by law, it will have any effect?

A. I have not considered it carefully.

Q. In many houses this has gone out of use. What is the reason?

A. The reason is that the age of marriage has advanced, and at a higher age the ceremony is not observed. The ordinary people follow the customs that are generally observed by the high class families and they are not also observing the ceremony now.

Q. Supposing you make it obligatory by law that the girl cannot be sent back to her husband's house till she is of a prescribed age, will the law work then?

A. To some extent.

Q. What do you mean by to some extent?

A. I mean that it will not work satisfactorily, because keeping forms is in no way useful to the country.

Mr. Mudaliyar: You say that legislation fixing the minimum age for marriage is the only effective means for preventing early consummation and early maternity. What is the age you would fix for marriage?

A. After 14 years or the 15th year.

Q. Taking all the practical difficulties into consideration, would you suggest an age higher than 14?

A. Yes.

Q. Would not the raising of the age of consent to more than 14 serve the same purpose as fixing the marriage age at 14?

A. No. I know of parents who allow the boy and the girl to live together in defiance of this law though they know it. This is due to parental love. These will go on in spite of the law.

Q. Do you not think that if the age of consent is fixed at 16 and not at 13 as at present, it will be easier to find out the age of the girl and consequently to know whether the law has been broken or not?

A. But this is difficult in cases where Purdah is observed.

Q. But the birth of a child cannot be kept a secret.

A. Yes, there are so many ways by which it can be kept a secret.

Q. Therefore will nothing else do other than fixing the minimum age for marriage?

A. That is the best thing.

Q. Are you in favour of raising the marriage age higher than 14?

A. Personally I am in favour of it; but I find that is the minimum where the orthodox can be made to agree.

Q. Do you not think that it is too late to quote from works to reconcile orthodox opinion? Can they not quote several more textbooks?

A. It is not the texts they quote that will be valued. The texts I have got and from which I quote are from law givers of a very high authority.

Q. You said that due to early marriage the children born of such marriages are dull-headed. Is this practice of early marriage prevalent among the Hindus of the Punjab only or among all classes?

A. It is not confined to any particular class; it is found in all classes.

Q. Even amongst Muhammadans?

A. Yes. You might have known that the Kashmir Government made a law fixing the age of marriage of girls. The Muhammadans there when

they came to know that such a law was about to be enacted, married their girls at the ages of 5 and 6. I was in the Jammu district recently and they were talking about it.

Q. Is the age of consummation amongst the Muhammadans in the Punjab more than that of the Hindus?

A. At least in Lahore it is generally the same.

Q. In South India the age of consummation amongst Brahmins is very much lower than in other castes. But the Brahmins say that they are the most keen-witted people. How do you account for that?

A. There are other reasons for that. The Brahmins in South India are usually rich. In Malabar where I had been the Brahmins are the richest people.

Q. But how has this any bearing on intelligence?

A. Because their children have open air and good food and live under better conditions. This has a great deal to do in the making of brains.

Mr. Kudri: In ultra-marital cases have you any objection to an age being fixed higher than in marital cases, and do you not think that it should be so high as to afford protection to the girl?

A. I would fix the age at 18 or even 19. Till then a girl will not be in a position to know the effect of her consent.

Q. Would it be an offence for a stranger to have connection with a girl at 18?

A. Certainly, because it is without her consent.

Q. We are told that so far as orthodox people are concerned whether they be Hindus or Muhammadans they have a greater objection to a minimum age being fixed for marriage than to the raising of the age of consent being fixed. What is your opinion on the matter?

A. These objections will always be raised. For instance when taps were first introduced in Lahore and Amritsar there was a great deal of objection. But are not people now using tap-water? So also these objections will vanish with time.

Q. Do you think that society is so far advanced, that the educated portion will welcome a raising of the age of marriage?

A. Yes.

Mr. Kanhaiya Lal: You are the Superintendent of the Research Department, Dayanand Anglo-Vedic College, Lahore?

A. Yes.

Q. How long have you been there?

A. From the year 1915.

Q. You say in all the Grihya Sutras, Dharma Sutras and Smritis marriage before 12 is thoroughly discarded. But we have been given numerous authorities by the Pundits from Bihar who have quoted texts which lay down that a girl should be married before she attains puberty, i.e., before she begins to have menses.

A. I know all those authorities. They all belong to a later period. I just gave you the earlier in chronological order. According to both Indian research scholars and European scholars they all belong to a later period.

Q. Does that chronology, so far as Sanskrit works are concerned, rest on a very sure basis.

A. I am myself writing a history of the Vedic period. It is about 3 thousand pages. It is in Hindi and after it has been revised I propose translating it into English.

Q. Can we fix the exact date of each work?

A. We can say this much that this was later than that. We can speak in relative terms. We can give the approximate centuries at least.

Q. You are in favour of marriage legislation. Suppose the age limit fixed for marriage by legislation is disobeyed and marriage is effected, how would you prevent consummation?

A. That will go on for a year or so. After that no infringement will take place.

Q. But suppose it is disobeyed in a large number of cases.

A. We can see what happened in Turkey and Afghanistan. It will not be disobeyed to such an extent as you think.

Q. Would not consummation go on if only the marriage law has been disobeyed?

A. That will be in rare cases, and it will be all right after three or four years.

Q. Is it not desirable that in order to give effective protection to married girls we must have a further law fixing the age of consummation of marriage?

A. That may be helpful if that first law is made

Q. Are you aware that even when the age limit is at 13 there have cropped up cases in almost every province in which the disobedience of the law has been made the subject of investigation and punishment?

A. Yes

Q. No law can stop disobedience. It can only act as a deterrent. And will it not deter people from expediting the consummation of marriage when they come to know that there is a punishment attaching to that disobedience?

A. We can count from the statistics of last year.

Q. But you have told us that according to Manu punishment is the means of deterring people.

A. That was a heavy punishment. There is a difference.

Q. Suppose we accept your recommendation and impose a very heavy penalty, do you think it will act as a deterrent?

A. Certainly. You say a man will not get service anywhere and then you will see that it would act as a deterrent. If the Government can create a new department of C. I. D. people, who know all these cases, perhaps that may help.

Mrs. Nehru: But can't the public help in matters like these?

A. No, we should not depend upon the public.

Mr. Kanhaiya Lal: If people have not got sufficient confidence in the police, how can you justify the creation of another police of the kind you suggest?

A. If there are better type of people.

Q. We cannot get the police from the Heavens.

A. You get your police from the best type of people.

Q. What we can do is to get a better class. We cannot get an ideal class. Suppose as you say we try to have a better class, would you in that case be in favour of fixing the Age of Consent?

A. Then it will be more useful. It is a question of comparative utility. If you are strict, certainly, that will be helpful.

Q. Suppose there is no marriage legislation, would it be worth while considering the fact that there is a high maternal and infantile mortality, to fix the age for consummation of marriage?

A. If it is only meant to be kept on paper.

Q. But you have said if there is a heavy penalty attached to the breach of the law, then it will have a deterrent effect.

A. With the better working of the police it will have that effect.

Q. You think then that heavy penalty by itself will not act as a deterrent.

A. If all the other things are as they are now.

Q. We are not reforming the police now, I want your opinion as to whether a heavy penalty alone will be a sufficient deterrent.

A. I have just now told you that we can talk only in relative terms. If you make the police better it will be more effective

Q. But leave the police aside would you still be in favour of having a law regulating the age of consent?

A. As an Indian I will still be in its favour, so that the outside world may not say that India has got a law on the statute book, laying the age of consent so low as 13.

Q. Now, what age would you fix in the case of marital cases?

A. The beginning of the 15th year.

Q. Do you think that will be sufficient to protect the girls from the physical and intellectual injuries to which they are now subjected and also their progeny from disease and debility?

A. That is another question. As regards general strength and brain power I think it cannot be achieved even if a girl is married at the age of 18.

Q. You think that the age of 14 will be inadequate?

A. That should be the least, considering the situation of the country as regards the orthodox section and others. But in order to secure proper physical and mental development of the people, the age of the girl should be at least 18 years. I will tell you one thing. Many of these Sutrakars think that even if marriage has taken place, a life of celibacy should be led for three or four years. If it is not possible for one to lead this life for a long time, it should at least extend to 10 or 12 days.

Q. What age would you recommend in order to obviate the injurious consequences to which a reference has been made.

A. 16 is the least and 18 is the ideal. Sushrut says that a girl is not fit for child bearing until she is 16 years of age.

Q. Here we are talking of consummation which may take place two years earlier.

A. But Sushrut also says that if the child is born he will not live for more than two or three years and if he survives he will be a weakling.

Q. Do you think that 16 will be acceptable to the general population, taking the orthodox and the advanced as a whole?

A. Only there will be a few persons who will stand in the way.

Q. How can you make the law effective? Can you suggest any measures?

A. One thing I have just now told you that a girl should not go to her husband's house before a particular age.

Q. Is it the practice that *Goana* takes place at the alternative limit of 1 year, 3 years, 5 years or 7 years, and it may take place in the very first year?

A. The limit measure of the *Goana* period should be fixed by law and not by custom.

Q. Has any reference been made in the Smritis to *Goana*?

A. In the later Smritis and works of the last 700 years there are some references.

Q. What are they?

A. I can find out I cannot give them just now.

Q. What age would you fix for the *Goana*?

A. The same, 16.

Q. You mean then that if marriage legislation is not possible, let the limit be enforced in the name of *Goana*, and Consummation postponed till 16.

A. Yes. The girl has a right to mental development like a boy. Don't you think that it will be a crime on our part if the girls are not allowed to receive sufficient education and are not allowed to go to the school for a sufficient number of years so that their brain may mature well.

Q. In marital cases, suppose we give the right of complaint to religious and social organizations like the Arya Samaj, the Sanatan Dharma Sabha and the Hindu Sabha.

A. A great disturbance will be created in the country. People will think that these bodies have become their masters. At any time personal animosities may grow and the President of the Samaj for instance may be taken to task. They will be looked on as spies.

Q. Suppose we have social organizations.

A. Even they will be discounted.

Q. Suppose we have women's organizations.

A. Those women may be hated by all.

Q. As regards extra-marital cases you have recommended the age of 18. If a girl is fit for child bearing at the age of 16 what grounds have you for suggesting that age?

A. In India a girl is not able to understand the consequences and cannot give an intelligent consent to cohabitation before 18?

Q. Is there no danger of young boys falling a prey to temptation and cases of hardship might arise, if you fix the age as high as 18?

A. I don't think so.

Q. In the case of fallen women would any difficulty arise?

A. I have not considered that question.

Chairman: You have been moving about in the villages. I would like to know in what number of cases the present age of consent law is ignored?

A. There are suppose about a hundred houses in the village and in three or four of them cases of this sort occur. I only go to villages where the Arya Samaj has been established.

Q. What proportion of cases go undetected?

A. During the last 13 years I have not seen a single case being reported. They do occur but they are not reported. In Amritsar there is a street in which Puharis live. They are very backward people. In their case marriages take place very early. There are 30 to 40 houses. In three or four, early consummation took place but was never reported. By early marriage I mean marriage from 7 to 10. In villages the marriages take place from 9 to 13.

**Written Statement, dated the 11th August 1928, of L. DUNI CHAND,
Advocate, High Court, Lahore.**

1. There is no particular dissatisfaction with the state of the law as to the age of consent in Section 375 and 376 of the I. P. Code as it is very rarely applied and it is not very well known among the general public.

The educated people who know the details of law are in favour. The illiterate people have no opinion about it, because there is rarely any case amongst them. The orthodox section of the Hindu public do not approve it whenever they come to know about it.

2. In my opinion there should be made an advance in the present law. Because on account of education the country has advanced to a great extent.

I do not think that the illiterate and orthodox section of the Hindu Community will seriously raise objection to it, as their opinion has since some time by contact with the educated community has undergone a change.

3. As far as I know the crimes of rape or seduction are fairly large in the Punjab. I do not think that the amendment of the law in 1925 has made any appreciable change in the number of offences. The change of law would not reduce the number of offences, because the class of peoples in which such offences occur, being illiterate and having belonged to the so-called low class or Vulgar class of society will not be much affected by any change of law.

4. Though the amendment of 1925 has not affected much in practice married girls, etc., still the previous law and the amendment coupled with advancing education of the people had some effect in putting marriages beyond 13. In my opinion education and propaganda work by Reforms Association like Arya and Brahma Samajes and the caste and other social conferences by men and women make an effective change in this matter.

5. In the Punjab in the country the girls attain puberty at much higher age than in the cities. It is difficult to give the exact ages at which the country and city girls attain puberty. But in some villages (in the Moham-madan and Sikh villages) I have seen girls attaining puberty at ages 16 to 20 and in city just at present ages 14 to 18.

6. Just at present I do not think that cohabitation is common before 14. There may be some cases among illiterate orthodox city Hindus but these cases very rarely come to courts.

7. The illiterate orthodox Hindus living in the cities were even now of belief that there must be consummation of marriage according to Shastras or Hindu religious books but neither these people could quote the authority nor I can quote any.

9. I do not consider that the attainment of puberty is sufficient indication of physical maturity to justify consummation of marriage. In my opinion taking all circumstances into consideration the consummation of marriages should not be allowed in the case of girls below 16 in case of young man below 25.

10. In my opinion a girl in India at the age of 18 will be competent to give an intelligent consent to cohabitation with a due realization of consequences.

11. During my experience, whenever girls, say before the age of 16 and young man before the age of 21 or so had consummation of marriage the health of both girls and boys as well as of their progeny has always deteriorated. It is difficult to give details at the limited space and time at my disposal.

12. In my opinion early consummation and early maternity are responsible for high maternal and infantile mortality in cities like Lahore and the same is to some extent one of the causes of intellectual and physical inferiority of the people residing in the cities.

13. There has been certainly further development in the opinion of the educated people of my province in favour of raising the age of consent as well as that for the marriages. I admit that the illiterate orthodox Hindus are not generally in favour of this change. But recently by their coming in contact with the educated, there has been a change in their opinion too in this respect. So much so that these illiterate orthodox have not courage in seriously opposing the change for the higher ages in the case of marriages and consummation.

14. Illiterate orthodox women have generally been in favour of early marriages and consummation in the case of their children. But recently by coming in contact with grown-up educated children there has been produced a change for higher ages as to the matrimony and consummation.

Oral Evidence of L. DUNI CHAND, Advocate, High Court, Lahore.

(Lahore, 18th September 1928.)

Chairman: You are an advocate of the High Court, Lahore?

A. Yes.

Q. How long have you been in practice?

A. For 30 years.

Q. Are you connected with any public institution?

A. Yes. I am a member of the Municipal Corporation for the last 25 years and I am Vice-President of Aror Bans Mukh Sabha. I have also been a member of different societies.

Q. During the last 10 years are you connected with any social work such as social propaganda with regard to untouchability, etc.?

A. Not directly, but I have been taking interest now and then in connection with the untouchables. I have been the President of the Sweepers for 2 years.

Q. May I ask you if either in connection with your practice at the bar or otherwise you have a knowledge of the rural population of the Punjab?

A. Yes.

Q. Do you think that amongst the Jats there are early marriages and early consummation of marriages?

A. Not to my knowledge, generally it is not.

Q. When do you think Jats marry?

A. I have said in my replies that generally they marry between 16 and 18.

Q. Practically there is no question of child marriages and early consummations among the Jats?

A. No.

Q. What percentage would you put the Jat population of Punjab to the whole?

A. I cannot say exactly but 90 per cent. people are living in the villages.

Q. Are they mostly Jats?

A. They are mostly agriculturists but some of them are traders.

Q. Would you put down Jats at 50 or 60 per cent.?

A. Yes.

Q. Leaving aside Jats do other (sections) of population in the villages marry their girls at an early age?

A. Those people who call themselves high class Hindus may marry at a very early age. This custom has been introduced very recently but before this these people followed the Jats.

Q. Leaving aside villages, do child marriages exist in urban areas?

A. Child marriages do exist but the educated people are marrying now at an advanced age.

Q. I would draw your attention to Question No. 20. Which of the two alternatives would you like?

A. I would rather have the minimum age for marriage fixed.

Q. Do you mean something on the lines of Sarda's Bill?

A. Yes. I think that will be more effective.

Q. What age would you fix for marriage?

A. 16 for girls and 25 for boys in urban areas, and in villages among the Jats 18 and 20.

Q. Do you think that if this penal legislation about fixing the age of marriage passes through the legislature, there will be any discontent in the Punjab?

A. There will be some discontent but not serious.

Q. Do you know of any feeling among the Mohamedans about this?

A. Not much.

Q. It has been suggested to us that goana might be penalised?

A. I do not know much about goana.

Q. Are you in favour of legislation at all in matters like these—socio-religious?

A. I am not in favour of legislation. These should be left to the reformers and other societies.

Q. You are in favour of legislation in the case of marriages only?

A. Yes.

Q. Would it be effective?

A. Yes. We are at present preaching that marriages should not take place early and if we have the sanction of the law it would have more effect.

Dr. Beadon: It has been said that in the case of early marriages the girls suffer.

A. Yes.

Q. Do you think they suffer seriously?

A. Whenever girls are married before 16 their health is very bad.

Q. Could you tell us any cases known to you personally?

A. Generally I have seen here that whenever the boys and girls have been married at an early age their offsprings become very weak, they often fall ill and die very early because young mothers do not know how to look after their children. Formerly we had our joint family system and young married girls had the advantage of the advice of their grandmothers. Now people like to live separately. Nearly 25 per cent. of the children die in the first year.

Q. Is the percentage of the death of infants born of young mothers greater than those of older mothers?

A. Yes.

Q. Have you known cases of mothers dying?

A. Yes.

Q. About how many?

A. I cannot give you the percentage but there is a fairly large number.

Q. Say 25 per cent. as it is in the case of infants?

A. I cannot say exactly.

Q. Have you noticed any particular ill effects on the mothers?

A. Yes. The children are very very weak. Their constitution being very weak they do not make much progress in education. They are put under heavy burden of education with the result that when they grow up they are again married at an early age and thus the whole line becomes of weaklings.

Q. We have been told that some of these children are dull headed. What do you think?

A. They are dull headed because they have very poor constitution and they have to study long hours in the schools and colleges and they cannot get nutritious food. Of all these of course the chief cause is early marriage.

Q. You have said the joint family system is going down. Is it going down by choice or by necessity?

A. Both by necessity and choice.

Q. Why is it by choice?

A. As girls and boys get education they want to become independent of the elder people.

Q. Is it especially in the urban areas?

A. Yes. It is not so much in the rural areas.

Q. We have been told that in the villages in the Punjab ever since the law has been passed unmarried girls unless they are married early run away. What do you think about it?

A. They are very rare cases.

Q. Do you think there is an increase in it?

A. No.

Mr. Mudaliyar: It has been suggested that the only way to maintain morality in India is to adopt the system of early marriage. If early marriage is done away with the cause of morality suffer seriously?

A. I do not agree with that. My experience is quite the contrary. There is some difficulty about marriages. Parents give education to young girls and they expect them to be married to well-to-do people which is not always possible and the result is that they are disappointed as people were disappointed in the past in Europe. There is another view that young people are very critical and if they were married young they would not be so critical. Taking these circumstances into consideration the opinion is that early marriage was good. I do not agree with that.

Q. Should I understand from your evidence that early marriage among the religious people is a matter of recent growth?

A. Yes. This custom has come into prominence and prevails as a fashion. Some people think that if they belong to good and high family they should marry their girls at an early age. If you cannot marry your daughter at an early age probably you cannot belong to a high family.

Q. You have said the minimum age of marriage should be fixed at 16. Do you think that it will be accepted by the orthodox section?

A. I should like girls to marry at 18 but now we have brought illiterate people to the level of 14.

Q. Has this been suggested as a matter of compromise for the orthodox people?

A. Yes.

Q. Supposing it is not possible to get the marriage legislation through the legislature. What would you fix as the age of consent?

A. Sixteen.

Q. In that case do you think there will be any difficulties in the way of making the law effective?

A. There will be no difficulties but the real fact is that such a law is a dead letter.

Q. When will it be ineffective?

A. Yes, because the Government and the police do not interfere and the people do not make reports.

Q. If the people do not complain is it because public opinion is not so much martialled against this practice or is it because punishment is so heavy that a neighbour does not want to expose his neighbour to the penalties of the law?

A. So far as marriages are concerned illiterate people do not know the existence of law.

Q. Would you suggest making the offence cognizable?

A. No.

Q. Is it because it may not be effective or because you do not like the police to interfere?

A. It may not be effective but at the same time I do not want to give handle to the police inefficient as it is in such matters.

Mr. Kadri: In Question No. 1 of your written statement you say that illiterate people have no opinion about it because there is really no case among them. Do I understand you to mean that there are no cases of early consummation among illiterate people in the Punjab?

A. As soon as a girl or boy is married people think they have a right to live together and nobody should interfere.

Q. Does interference only take place when there is some violence?

A. Yes. In the villages muklawa is given about 2 years after marriage and for this period the girl remains with her parents. In the cities muklawa is given after a year or so.

Q. Do you advocate marriage legislation, i.e., minimum age in the case of girls being fixed?

A. Yes.

Q. Would it not be an anomaly if the age of consent remains at 13 and the marriage age is fixed higher?

A. As I told you that law is a dead letter. There have been some cases but I do not give any importance to them as they are due to malice. There have been some cases of young girls married to elderly men and in such cases the law will be ineffective.

Mr. Kadri: In reply to question 3 you say that the illiterate people will not be much affected by any change in the law. Do you mean to say that they are ignorant of the law?

A. In the first place they are ignorant of the law. Secondly society being such you cannot prevent certain offences by law only, theft for instance. Moreover these villages are isolated and therefore the law will not be effective.

Q. Will not the age of consent have an indirect effect on the people, of an educative nature for instance?

A. Yes.

Q. In the case of ultra-marital relations would you have any objection to fixing the age of consent at 18?

A. No; after that age the girls can look after themselves.

Mr. Kanhaiya Lal: You are not very keen about legislation fixing the age of consent in marital cases. Supposing there is no marriage legislation, would you be keen then?

A. Then if the age of consent is good it will have some good effect. In other cases I am not very keen.

Q. Can you suggest any measures for making the law effective in that respect?

A. I do not think it is necessary to make it effective. We have progressed very much in education. There are societies like the Arya Samaj and the Brahmo Samaj and people generally come in contact with these. A healthy influence is created and people are giving up marrying their girls at an early age. Of course there are bound to be exceptions where the girl has got a lot of property, etc.

Q. Are you aware that there is a section of orthodox opinion in the country which inculcates that marriages should be effected before the appearance of the menses?

A. I do not think the class of people who quote the Shastras in support of early marriage is very large in the Punjab. Contact with educated people has affected their opinion.

Q. Is it not necessary that the law should be effective and not a dead letter?

A. The law will be effective only if you give power to the Police. But personally I would not give power to the Police.

Q. Would you empower the social reform organisations in the country to take action in the matter and exempt them from liability for defamation or bringing false charges?

A. Yes, it is necessary.

Q. Would you like to give a similar power to the women organisations in the country?

A. We have not many women organisations in the Punjab?

Q. Would you make any differentiation in the punishment in marital and extra-marital cases?

A. Yes.

Q. How much would you fix as the maximum in marital cases?

A. It is very difficult to say.

Q. Would you only impose fine, treating the offence as of a technical nature?

A. Yes; also simple imprisonment up to one month or so.

Q. Probably you are aware that there is often a great disparity in ages and elderly men of 30 or 40 marry girls of 13 or 14. It is generally in those cases that serious injuries follow. Would you give a lenient punishment even in those cases?

A. There are very few such cases but I would not mind giving 6 months in such cases.

Q. Supposing there is a case of a very serious injury, would you fix the punishment at six months even then? Sometimes the injury results in death.

A. In such cases I would give 2 years.

(Mr. A. Mudaliyar: It will come under section 304-A, Rash and Negligent Act.)

Mr. Kanhaiya Lal: Do you think that the existing system of registration of births is satisfactory?

A. It is not very satisfactory, but still it is effective all the same. Generally people get births registered.

Q. Are you able to get reliable evidence in case there is a dispute about age?

A. Fairly reliable because when the birth is registered the parents will not know whether there will be any trouble about the age later on.

Q. But questions of identity may arise because no names are given when the birth is registered. What is your suggestion to get out of this difficulty?

A. Yes, it is true that names are given later on. The only way by which you can do it satisfactorily is to educate the people.

Q. Would you like to recommend that the parents or guardians of the child must make a supplementary report after the name is given to the child?

A. Yes.

Q. Would you like the idea of introducing a system of registration of marriages?

A. Among Muhammadans there is some such system in the villages in the Punjab? It is rather useful.

Q. But our object is to know the ages of the parties to the marriage so that consummation before the prescribed age may not be effected.

A. I do not think it can serve that purpose. Among the orthodox people it is usual to exaggerate the age of the girls, for instance, if the girl is 13 they will say that she is 15 and so on. They think that they should always give a higher age.

Q. Supposing you say that the parents or guardians should make a true statement in the register and that false statements will be liable to penalty, do you think it will then be effective?

A. No; it will create discontent, though personally I will not mind it.

Q. Why?

A. People do not want anybody to interfere in regard to these matters. But personally I think it is an experiment worth trying.

Q. On whom will you place the obligation of reporting the marriage, on the parents, or guardians or on the priest?

A. The parents^a or guardians; the priests will say that the parents told them, about the ages, they cannot judge, etc.

Q. Who should be the registering authority in the case of marriages?

A. Sub-registrars, etc. In the city we might have sub-registrar of marriages. In the village Tahsildars or others can do that. It requires rather consideration.

Q. Would you give the authority to the Tahsildars and Deputy Commissioners?

A. They have no time at all. The work is generally entrusted to clerks and hence it cannot be reliable.

Q. In extra-marital cases you have fixed the age of consent at 18. How would you deal with fallen women? Can they be kept untouched till 18 or is the law to be a dead letter there?

A. Even now it is; I mean that all the cases do not come to the notice of the people.

Q. Would you then stick to 18?

A. Yes, I do not see any reason for making it lower?

Mrs. Nehru: You state in your reply that the ignorant classes are coming in contact with the educated classes. Do you mean that this tendency is becoming greater?

A. Yes; even in the cases of villages there is a family shop-keeper whose son is reading in the college. He goes to the village and tells the people what is happening in the towns, and thus bring new ideas to the people. That way there will be progress.

Q. Is there any conscious effort on the part of the educated people to educate the masses?

A. Yes, we have got the different castes and each caste has got its own association. Meetings are held in these associations almost every month. In these meetings educated people talk about marriages, etc., how the girls are now-a-days married at an advanced age, how the boys cannot become high officials if they do not prosecute their studies, etc. Self-interest makes the masses understand these things.

Q. Do you think that this contact has made social reform more popular with the masses?

A. Yes, it has made.

Q. Do you think that the Age of Consent Act has not been working well?

A. No, it is not effecting much good.

Q. Do you think that if women organisations are given the power to complain and prosecute it will have some effect?

A. Yes.

Q. Do you think that if Women Magistrates are appointed to try these cases in camera, summary trials are introduced and other facilities of that sort are given, it will bring these cases to light?

A. It will be effective to some extent. Women will be more humane and try these cases with sympathy. It would not create discontent.

Q. Do you think any means can be found to separate the wife from her husband till the prescribed age, taking into consideration that in different provinces different conditions prevail as regards early marriage?

A. No; 10 years back it was possible, but not now. Here in the Punjab they have stopped Muklawa altogether.

Q. Supposing Muklawa is penalised?

A. It cannot be again introduced now.

Q. Do you think that the age of marriage is higher in the villages?

A. Yes, but in the case of early marriages the people pose themselves as belonging to the high class. But comparatively I would say that the age of marriage among the villages is higher than in the cities. Among the agricultural classes especially who have to do manual exercise, etc., it is rather high.

Q. Do you therefore think that the law of the Age of Consent is unnecessary?

A. Yes; it is necessary that there should be a law fixing the age of marriage.

**Written Statement, dated the 14th August 1928, of Mr. JANKI DASS,
Secretary, Dev Samaj, Lahore.**

I have the honour to acknowledge the receipt of your printed circular letter No. 42-A. C. C., dated 31st July 1928, together with a copy of questionnaire prepared by the Age of Consent Committee, and submit herewith our replies to it *ad seriatum* as required. I am ready and prepared (leaving some unforeseen circumstances) to give oral evidence on the points set forth in my written replies, if the Committee considers that some of them need elucidation.

2. Let me, however, submit that the Dev Samaj as a society wants both for marital and extra-marital offences at least 16 years as the minimum age of consent. We would rather wish the age limit to go beyond that, but as that would not be practical at present, we want it raised to 16 years for the following reasons:—

Firstly, because a girl does not reach her physical maturity before 16, hence both for her own health and the well-being of her future progeny, cohabitation with her, whether in marital or extra-marital relation, is physically disastrous.

Secondly, when law does not consider consent given by a person under the age of majority to dispose of his property as valid, and hence no minor is considered legally able to sell or otherwise transfer his property, it is strange that the same law legalises a consent given by a minor girl of 13 or 14 to dispose of her person, her honour, honour of her parents, and the future of her progeny.

3. Let us, however, state that law though a blessing has, after all, a limited scope. The Age of Consent Bill if passed, would be a good handle no doubt against an offender who is brought to court, but it cannot go further. Beyond this, social Reform can be brought about by creating the public opinion or change of heart.

4. The manager, Dev Samaj Girls' High School, Ferozepore, to whom a copy of this circular letter was also sent by you, on the 18th July 1928, is sending no separate reply. His views may be considered similar to those of mine.

Answers to the Committee's Questionnaire.

1. There seems to be dissatisfaction among the reforming section of the intelligentsia of India which leads the Public opinion.

2. The circumstances which justify us to call for an advance of the age of consent are as under:—

Firstly the law does not allow a person under the age of majority to give consent to the disposal of his own property. It is strange that the same law should allow a minor girl to dispose of her person, her honour, and honour of her parents at the tender age of 14. In this respect, we would urge that age of majority should be considered the only proper limit of age enabling girls to give their consent. If that is not probable, we would like to have at least 16 to be the minimum age.

Secondly, the physical development of a girl at the age of 14 is usually not at all suited to undergo the strain of child-bearing, and the result is generally disastrous for her own health and that of her progeny.

3. The reported cases are not frequent. But unreported cases, though not frequent, are sufficient to cause reasonable apprehension. We have no statistics on the point.

4. It is difficult to say, how far the amendment of 1925 proved effective in protecting girls against cohabitation with husbands, within the prescribed age limit or in postponing the consummation of marriage, but it has certainly stimulated public opinion to same extent.

The effective steps would be the widest publicity given to such laws, both by the Government and the press, and vigilant boards being appointed to safeguard the girls.

5. Thirteen may be taken as the average age in the Punjab at which girls commonly attain puberty, but not maturity. It does not differ much in various classes.

6. In Punjab villagers' marriages, generally take place late, but in towns people, where early marriage is prevalent, cases do occur of cohabitation soon after puberty, and even before the girl completes thirteen years. We are not aware of any such cases having gone to court.

7. To some extent religious injunctions are responsible for *early marriage*, but not early consummation.

8. Yes, 'Goana' ceremony is common in many parts of the Punjab. As a rule, it was anterior to consummation, though cases occur now when it coincides with consummation. It is performed generally after the puberty begins.

9. The beginning of puberty is not sufficient indication of physical maturity to justify consummation of marriage. At least three years after puberty, or at the age of 16, the physical development of a girl can be considered enough to justify consummation of marriage and in many cases even later.

10. A girl can be considered competent to give an intelligent consent not earlier than 16 years of age.

11. Yes, I know of such cases in which early cohabitation even soon after puberty has resulted in injury to physical health of girls and even to that of their progeny.

12. To some extent, this is responsible for huge maternal and infantile mortality, though ignorance and poverty contribute equally to it.

13. There is development of public opinion, but it is confined to educated and reforming portion of people only.

14. Ignorant class favours that, but educated women as a class are opposed to it.

15. Difficulties do arise. But compulsory birth registration under strict supervision would certainly mitigate these difficulties to a great extent.

16. The difficulty would be materially minimised if the age of consent is raised to 16.

17. Assuredly yes. They are different offences. In extra-marital cases, the punishment should be very severe, which may extend to 7 years. In marital cases, however, the punishment should be heavy fine extending to any amount, varying with the financial condition of the offender, and in default of fine, simple imprisonment extending to two years.

18. Marital offences should be non-cognisable and bailable, while extra-marital offences should be cognisable and non-bailable.

19. The law as it exists is a sufficient protection.

20. The latter would be more effective in marital cases, though both should be brought on *par*. The orthodox class would prefer former, though reforming class would prefer the latter, if both are not vouchsafed.

21. Though the strengthening of penal law is necessary to meet the emergency and to prevent such offences to some extent, yet it is quite unable to bring about a better change in the hearts of people, which is only possible by gradual evolution through higher influences.

Oral Evidence of Mr. JANKI DASS, Secretary, Dev Samaj, Lahore.

(Lahore, 18th September 1928.)

Chairman: How long are you connected with the Dev Samaj?

A. 21 years, 7 years as a member and for the last 14 years as the Secretary of the Samaj?

Q. Who was the founder of this Samaj?

A. Pandit Satyanand Agnihotri.

Q. Are the objects of the Samaj social or religious?

A. The objects are purely religious; the social ones come by the way. There are certain things which a member has to forsake before he becomes a member of the Samaj.

Q. What is the membership of this Samaj?

A. It may probably be some thousands, in any case not over a lakh. It has got followers all over the Punjab and other provinces.

Q. Does it include all classes of people?

A. Yes; it includes Muhammadians also. We do not change the name, but anybody can become a member of the Samaj.

Q. Is your opinion representative of the Dev Samaj? Was there any meeting of the Samaj in which the questionnaire of the Committee was discussed?

A. Yes.

Q. In reply to question 4 you say that the effective steps would be the widest publicity given to such laws, both by the Government and the Press, and vigilant boards being appointed to safeguard the girls. What do you mean by that?

A. I mean that women visitors should mix with our women folk and explain to them the laws. Otherwise people remain ignorant.

Q. What is the nature of these vigilant boards? One generally understands by vigilant boards those who undertake to bring cases to light and report.

A. My object is that there should be women folk so that they may explain to their sex the laws that have been imposed and how they are protected under the laws.

Q. Will you require these women to report cases?

A. Yes.

Q. But would they not then be looked upon as spies and get a lot of blame?

A. Yes; but we are doing it ourselves now. We have got our whole-time workers, both male and female, who do such work. Only they do not report cases. I will face the blame attached to it for the sake of general reform.

Chairman: In answer to question No. 11 you have said "I know of such cases in which early cohabitation even soon after puberty has resulted in injury to physical health of girls and even to that of their progeny", could you give any instances?

A. I belong to that part of the country where infant marriages are very prevalent. I am the resident of Karnal district and I am Agarwal Vaishya by caste. I have seen people marrying their girls between 11 and 13. I have

seen disastrous results of these marriages. I have such a great abhorrence for this evil that I cannot explain in words.

Q. Can you give us any concrete cases? How many cases in a year, for instance?

A. I cannot give statistics.

Q. Would you say a large number of cases or would you say a few?

A. Not a few. There are many.

Q. You cannot give instances.

A. I can. There was a girl of 11 years and she was married to a man of 30 years. Her whole life was ruined. She was a complete wreck. She did not die. Her children were weaklings and so many of them died. There are other cases also of this very type. I know many cases of such girl mothers. They are being treated as chattel. They are being deprived of their birth right.

Q. In answer to question No. 20 you have said fixing the minimum age of marriage would be more effective though both should be brought on *par*. What do you mean by this?

A. There should be the same age for marriage as the Age of Consent.

Q. What would that age be according to you?

A. 16 both for marital and extra-marital cases and for marriage as well. It should be 16 all round.

Dr. Beadon: In answer to question No. 12 you have said "to some extent early consummation is responsible for huge maternal and infantile mortality". Do you think there is higher infantile mortality among the children of juvenile mothers?

A. There is.

Q. Do mothers also suffer?

A. They do.

Q. Do you think that they die early too?

A. They die in many cases. But their progeny suffers most. The girls also do suffer.

Q. Have you found in your experience that these mothers become sterile?

A. I cannot give you any information about that.

Mrs. Nehru: You advocate the raising of the age in marital cases to 16. Do you think the present age of 13 has been effective?

A. It may be to some extent.

Q. But what is the use of raising it further if 13 is not acted up to?

A. That is why I say the law should be proclaimed widely in towns and villages.

Q. Do you think if it is made known to the people it would be effective?

A. Because they fear the law just as a thief is afraid of the police.

Q. The offence is not cognizable at present. Would you like it to be made cognizable?

A. That is why I have advocated Vigilant Boards. I don't want to make the offence cognizable. That will be another handle in the hands of the police to harass people.

Q. Would you like to have any change in the procedure of trials? Would you like summary trials, for instance?

A. It is a matter for the judges and the lawyers. They must find out some means.

Q. If women magistrates are appointed to try these cases do you think it will be helpful?

A. Exactly. It will certainly be helpful. I will advocate it from the bottom of my heart.

Q. You have suggested the same age for marital and extra-marital cases. What is your reason for it?

A. Because 16 is the age when a girl can give an intelligent consent. It does not matter whether it is marital or extra-marital.

Q. Do you think the age of 16 is high enough for girls to understand the consequences of their giving consent to have relations with any man.

A. We will have no objection if you raise it to 18 even. We are in the course of an evolution. If you raise it to 18 we won't object to it.

Q. Would 16 for marital cases and 18 for extra-marital cases work satisfactorily?

A. People must know that such and such is the law. I have suggested the organization of Vigilant Boards.

Q. Who, do you think, ought to appoint these boards? Would you leave it to the Government?

A. I don't think so. Just as we are organizing other bodies we can do this as well. We Dev Samajies have already got regulations about marriage which are contained in 'Bibah Paditi'.

Q. Do you think that these Boards should be recognised by any body? Because if once the right is given to the public, to establish these boards, anybody may get up and form himself into a board and thus begin to trouble the people?

A. I think it is a matter that may be discussed.

Q. Can you tell us, for instance, whether they should be recognised by Municipal Boards or District Boards?

A. I am sorry I cannot give any opinion about that. It may be discussed. We have not considered the question. It did strike us that Vigilant Boards should be established which may educate the people.

Mr. Mudaliyar: At what age are marriages generally performed in rural parts in this part of the country?

A. We in the Dev Samaj have Sikhs, Jats and others, and they do not perform marriages before 16. There are cases even among the Dev Samajies when marriage takes place between 13 and 15. This Anushatan is not binding on all the members.

Q. Can you give us any special reasons why this particular Bidhi is not binding on all?

A. Because all cannot follow it.

Q. Am I right in putting it that this regulation about marriage is so very difficult that only the most advanced Dev Samajies would be prepared to follow it?

A. Yes.

Q. Apart from Dev Samajies what is your experience as regards the age of marriage among the rural classes?

A. They marry their girls rather in advanced ages. In towns my experience is that they marry at a very low age at about 10 or 11. These Zimindars, Jats and agriculturists marry at an advanced age.

Q. Do you think that the raising of the age to 16 would be acceptable to the large majority of the people?

A. Whether it is acceptable or not, I would advocate it vehemently and strongly.

Q. So far as the orthodox body is concerned do you think that a majority of the people would be prepared to accept 16?

A. I don't think it will be acceptable to the majority. But the change is so good, it must be forced on the majority.

Q. In your answer to question No. 7 you have said "religious injunctions are responsible for early marriage but not early consummation". Are you

very positive in that statement? Are there no texts as regards early consummation or is that just your impression?

A. This is so far as I know. I have seen many marriages in my part of the country. We have that Goana ceremony. When a girl is married she goes to her husband's house for a couple of days and then returns back to her father's house. Then after three or four years the Goana ceremony takes place and the girl is mature by that time.

Q. But we are told that this practice is not being observed now.

A. Yes, because the sons do not want to remain under the yoke of their parents.

Q. Do you think that orthodox opinion is more against fixing the age of marriage than the Age of Consent?

A. Orthodox opinion is against marrying girls above a certain age. They have the consummation ceremony, i.e., they want to marry girls before they attain puberty, at a certain age, say 15 or 16.

Q. In that case the lower the age of marriage and higher the Age of Consent the more acceptable will it be to the people. Is it not?

A. It may be. So far as I am concerned I would not say. There will be so many difficulties in the way of enforcing the law even if these vigilant boards are set up. We have to educate the people.

Q. Supposing the age of marriage is fixed at 14 and the Age of Consent is fixed at 16 would that meet orthodox public opinion and do you think that the law would be more effective in that case?

A. It may, I would like to have the age I have mentioned.

Q. Do you realise that the reformer's position is different, but that if you were an administrator you would try to meet the orthodox opinion also?

A. Some means will have to be found.

Q. What is the system of Birth Registration that is prevalent in your part of the province?

A. The parents go and get it registered with the Lambardars perhaps.

Q. What is the strict supervision that you would suggest?

A. If these Lambardars are made responsible for seeing to the registration of every birth, it is just possible that the people may begin to get their children registered. As at present the births are not reported properly.

Q. Is there already a penalty attaching to failure to report?

A. I don't think so. There is no penalty.

Q. Then as regards offences in marital cases you have said that a heavy fine should be levied. On whom would you levy this fine?

A. On those who are responsible for the marriage.

Q. It may be the husband in marital cases.

A. Then on the husband.

Q. Do you realise that the husband may be a minor and may not be in a position to pay unless his parents or guardians pay for him?

A. If the parents have to pay the fine, they will be on their guard.

Q. But the consummation may take place without the knowledge or responsibility of the parents especially if you raise the age to more than 16.

A. Let the husband pay.

Q. He would not be in a position to pay.

A. Let others who are responsible for that pay.

Q. But according to my hypothesis consummation does take place without the parents being responsible for it.

A. I have given the alternative of imprisonment.

Q. Would you advocate corporal punishment in such cases?

A. That would be barbarous. I do not approve of that. *

Q. You have said that the punishment should be only fine and in case he is not able to pay the fine he should undergo imprisonment. You are therefore lightening the present law. Have you any particular reason for this?

A. Because such cases should be viewed with sympathy and leniency.

Q. Is one of your reasons for lightening the offence that the crime would be more frequently reported?

A. Yes, that can also be a reason.

Mr. Kadri: Supposing the offender is not a boy. I know of a case in which the offender was a young man of about 30 years and he married a girl of 10. After six months of the marriage he had consummation with the result that the girl was a complete wreck. She could not even walk. Do you think in cases of this nature a simple punishment of fine would be adequate?

A. A single case cannot be taken to enact legislation. Such cases will not be frequent.

Q. Generally half a dozen cases of this nature are reported in the country every year?

A. You cannot legislate for half a dozen cases.

Q. Would you take away from the magistrate the discretion of awarding imprisonment?

A. Yes, I would do.

Q. One of the witnesses suggested that in the case of a boy below 18 years a simple warning would be enough and he should be let off under section 562, Indian Penal Code. Would you extend the provision of that section to these cases?

A. Yes.

Q. Your samaj is a cosmopolitan institution and admits people of all classes. May I take it that there are many Mohamedans?

A. There have been only a few.

Q. Do you think the opinion expressed in this statement represents the opinion of the majority of the Mohamedans?

A. No.

Mr. Kanahaiya Lal: You have said that the age of 16 for the consummation of marriage would not be acceptable to the majority of the people. What age would be acceptable to the majority of the people?

A. I have said it would not be acceptable to the orthodox people.

Q. What is the highest age that would be acceptable to the orthodox people.

A. I cannot say for certain but you can take it to be 14.

Q. You have said that a girl is not fit for consummation or to give an intelligent consent till 3 years after the attainment of puberty, and girls generally attain puberty at 13. If she is fit to give an intelligent consent at 16, why do you suggest a higher age limit for extra-marital cases.

A. I have no objection in marital cases, but if it is raised in extra-marital cases I would prefer it because these are two different things and in extra-marital cases the offence is heinous.

Q. Supposing the girl gives her consent, would not cases of hardship arise if you raise the age to a higher limit where young boys fall a prey to temptation?

A. I only said preferable.

Q. How would you provide for these cases of hardship.

A. If after taking evidence you find that it is not desirable, you may do whatever is desirable. I cannot say definitely.

Q. You have said you will provide vigilance boards to look after these cases. Would they be of a voluntary character?

A. Yes.

Q. Do you think people will be willing to take up this work?

A. Yes, there are reformers.

Q. Would you provide these vigilance boards in towns or villages?

A. I will have them in every locality.

Q. Don't you think in marital cases there is considerable sympathy with the husband because the offence is of a technical character?

A. There may be but I cannot say.

Q. Do you find such sympathy existing?

A. Yes, it does exist.

Q. Yet you are hopeful that these vigilance boards will be effective?

A. Yes, people must take it up if you want to bring in reform.

Q. Is the registration of births not compulsory?

A. If it is compulsory it is not followed.

Q. Is it compulsory?

A. It may be but I am not aware.

Q. Can you suggest any method of making the birth registration more efficient?

A. I cannot say.

Q. Would you for instance require that every man making the report of birth should at a later stage when the child has been named make a supplementary report giving the name of the child so that when questions of identity arise there may be no difficulty?

A. Yes.

Q. Would you further recommend that when a report of a birth is made, a certificate should be issued by the registering authority giving the necessary particulars, so that the reporting individual may preserve it for future use?

A. Yes. If you get it there is no harm; it will be useful.

Q. Would you make the registration of marriages compulsory?

A. No, it will be a hardship.

Q. What hardship you anticipate?

A. Anything that is made binding as regards marriages is felt very much.

Q. At present births and deaths are reported and if we register marriages would the hardship be greater?

A. Anything made binding is a hardship.

Q. If the Age of Consent is fixed at 16 it will be a hardship because it will be binding?

A. No.

Q. Cases arise in which questions of age give considerable difficulty. If the marriages are registered, the vigilance board can go and find the age of the girl from the register. If the age is such as not to justify consummation the vigilance board would take action?

A. I do not think so. If the parties know they are going to be imprisoned they will not give a correct age.

Q. How would the vigilance board ascertain the age of girl?

A. Yes, we have got women public workers; they will go and find out.

Q. Would you still not like to have the marriage registers in order to enable the vigilance board to find out the age?

A. We have only to educate the people.

Q. Will it not be the business of the vigilance board to make reports?

A. They may make reports, but for the most part their work will be to educate the people.

Written Statement, dated the 25th April 1928, of Mr. DIN MOHAMMAD, M.A., LL.B., M.L.C., Advocate, Gujranwala.

1. I have been practising as a Lawyer for the last 18 years and have been visiting several neighbouring districts in connection with my profession and can safely affirm that there is absolutely no dissatisfaction with the state of the existing law as contained in Sections 375 and 376 of the Indian Penal Code.

In a country like India it is too much to expect a uniformity of opinion on any political or social question. Even in the Punjab Province, people materially differ from one another in their habits and customs. Moreover, the climatic conditions also differ and so do the dialects of one and the same language and the religion too, and all these factors count in determining the matter under discussion.

As a Punjabi, I do not realise the necessity of legislative interference with this social aspect of the life of the people, as child marriages among the rural classes are very rare and the affairs are gradually improving even in the case of the urban people. One seldom finds child marriage among the Musalmans and especially among the Zamindars and even the Hindu Zamindars now celebrate their childrens' marriages when they are of age and it is a matter of common knowledge that they constitute the bulk of the population. Here very few Mussalmans and some Hindus no doubt, still believe in child marriages, but the effect of the Western education and civilisation and the force of circumstances is gradually being felt.

So far as the intercourse of a man and a woman outside the marital state is concerned, the proposed measure appears to me to be redundant, keeping in mind the fact that among the marital races of the Punjab development takes place earlier than in other provinces.

I have not come across any resolution of any representative association or institution here urging an amendment of the existing law and I have never heard any educated individual or otherwise complaining against the inadequacy of the present provisions and I attribute this attitude of satisfaction with the existing law or to say the least indifference in this matter to the reasons outlined by me above.

2. I have already indicated above that so far as I know the people here are not anxious for making an advance on the present law and I can dare say that so far as interference with marital relations is concerned, people affected thereby would not swallow it calmly. I enclose herewith a copy of my opinion on the Children's Protection Bill already forwarded to the Government of India on the 25th April 1928, and I still adhere to the same opinion. (Please see annexure A.)

Cases of rape are so few as compared with other criminal cases and especially with girls who verge on the border line of consent that it appears to me to be a sheer waste of time, money and energy to undertake any legislation on this score.

3. I have already mentioned that crimes of rape are not frequent in this part of the country and similar is the case with the crimes of seduction. The amendment of the law referred to had had no appreciable effect in either preventing or reducing cases of rape among strangers. I do not mean to say that these offences do not take place here. What purport to convey is, that amendment or no amendment, it would leave the society where it is. For example, there have been cases of rape with children of 5 to 9 years of age by offenders of 12 to 80 years of age and cases of seduction or abduction in connection with women of 20 to 40 years of age and no legislation can successfully cope with such moral aberrations. The existing law does not deal with such offenders leniently but still it had not proved deterrent.

4. The amendment referred to has not had any marked effect. Even before the amendment, it was very rare that marriage was allowed to be consummated

before the attainment of full puberty. It would not be too much to say that society in general is not even aware of the amendment and its knowledge is confined to few persons who have to deal with criminal courts.

5. In this part of the country, girls attain puberty generally between the ages of 12 to 15 and it differs in different castes, communities and classes of societies. For example, among persons who live in affluent circumstances or among the communities who reside in villages and live mainly on milk and ghee or are used to outdoor life and manual labour, the development takes place much earlier than among those who are living in congested towns or do not have much to live upon.

6. There are no classes of people living in this Province among whom cohabitation takes place before puberty or soon after puberty but I have known cases among some of the Hindu Families where a girl of 13 years of age had been carnally known to her husband. No such case has ever come to court in my experience.

7. I do not think that where consummation takes place early, it can be attributed to religious injunction, though it can be remarked that some of the Hindus or Mussalmans, who marry their children at an early age, entertain a superstition that a girl who has attained puberty should not be permitted to be left unmarried. So far as the Muslim Law is concerned a girl who is *sui-juris* can enter into a marital relation of her own accord and the age of puberty according to this law ranges from 12 to 15. But this is a merely enabling provision and not a mandatory obligation. I am not aware of any provision of the Hindu Code, which makes it incumbent for parents to marry their girls before 13, though this sanction might be deduced inferentially from some of the provisions of the Hindu law.

8. I am not personally much acquainted with the every day life of the Hindus and am unable therefore, to say whether any such ceremony is performed in this part of the country but so far as the Mussalmans are concerned, I am positive that no such ceremony is performed.

9. Generally the attainment of puberty in the proper sense of the term coincides with physical ability to perform the marital rights.

In some cases, however, where girls are of slender build, mere appearance of the signs of puberty may not justify consummation of marriage. Such girls should not share the same bed with their husbands before the age of 15.

10. No age limit can be fixed which would satisfy all grades of society. But one can quite confidently remark that if a girl has attained puberty in the real sense of the term, she can give an intelligent consent with a due realisation of consequences.

11. I have not come across any such case during my professional experience but I can dare say that such cases have been so rare as to be negligible.

12. Unfortunately we Indians have acquired the habit of generalising and making sweeping ascertion. We catch hold of a social evil and attribute every calamity to it, unmindful of the fact that in this complex life of ours, thousand and one forces are at work to bring about results whether good or bad. For high maternal and infantile mortality and for cramped intellectual or physical growth, are responsible our unclean habits, our extreme indigence, our superstitious bent of mind, our insanitary methods of life and our slavish mentality.

To attribute maternal and infantile mortality to early consummation or early maternity alone is to fall into an error, which, leading us astray from the right track, would actually stand in the way of its remedy. I cannot imagine that any marriage girl would be victimised by her husband against her wishes and in case of her consent her desire would naturally be created at a time when she would be physically able to bear the consequences of her husband's marital embraces. I have seen cases where fully grown up women have not survived the pains of delivery. I have seen children of fully grown up people, who have been under-developed in every respect and I have also seen cases where child mothers have borne the burnt most bravely. I have been emphatic in my refutation of this charge that is laid against early

consummation and early maternity, for, I believe, that unless the disease is rightly diagnosed and so long as it is attributed to the wrong source, it is bound to continue and would not be cured. We should introduce proper reforms to remedy these evils and then it will be evident that early consummation and early maternity has not much to do with the high mortality among mothers and infants or with the stunted growth of our intellects and bodies.

13. No such development has taken place since 1925.

14. Some women here favour consummation of marriages for their children soon after the attainment of puberty but for this their entire social system is to blame. Happily their number is very few. People living in the villages generally wait till their children are fully developed and the poor classes living in the towns are restrained by their poverty from performing these marriages at an early age. The educated section of the towns living people do not favour early marriages as the parents of boys believe that if their sons are better qualified, they would secure better matches for them and the parents of girls also wait to secure mature husbands for their daughters, lest they might plunge into the dark and ruin their daughter's career for ever. With the advent of the modern civilization, a modern boy realises that his needs have grown immensely and he generally shirks the extra burden of his wife unless he is fairly settled in life and is able to bear it financially.

15. Medical evidence is vague in the matter of the determination of the age of the girls between the age of 14 and 18 years, as the signs of puberty as well as the cutting of teeth and other developments are generally the same between these years. It is not, however, difficult to distinguish between a girl of 12 or 13 from that of a girl of more than 14 years of age. Moreover, the X-Rays test has gone a long way to make such opinions definite and if such apparatus are introduced in head quarters hospitals, no difficulty would be experienced at all.

16. Please see my reply to Question No. 15.

17. I am strongly opposed to marital offences of this class as it is an unnecessary interference with the privacy of a house-hold. If, however, it is intended to perpetuate this evil, I would much prefer to treat it as a separate offence, would not recommend the imposition of any punishment except that of whipping if any violation is detected and would make it triable by a Summary Procedure, so as to ensure that an offender of this class is not put to any inconvenience beyond what is necessary. So far as the extra-marital offences are concerned I consider the existing legislation is sufficient.

18. Please see my reply to Question No. 17.

19. I would suggest that cognizance of marital offences should not be taken unless the girl is the complainant, if she is of more than 12 years of age. In all other respects, I would leave the law as it is. I would not recommend any safeguards against collusion to protect the offenders, for I do not approve of executive interference, if the parents of the parties or the parties concerned do not feel inclined to move in the matter.

20. In order to obviate all the difficulties alluded to above and ensure the non-interference of the Police Authorities, I would much prefer the fixing of the minimum age of marriage and I can confidently say that this measure would be generally approved of. It is much better that a raw youth may not be tempted at all than that he be punished for succumbing to the temptation at an age, when he can hardly be able to control his passions.

21. I would not dispense with legislation but would rely more on the progress of social reform for the achievement of the object in view than on the provisions of penal law.

ANNEXURE A.

It cannot be denied that the object of the children Protection Bill is noble and humanitarian, but this is not the only concern of the legislator. He has also to consider whether the intended legislation would serve any useful

purpose or achieve the object for which it is designed. In case it appears that it would remain a dead letter or that inconvenience caused by its practical application would be far more serious than the evil which it remedies, time and energy should not be wasted in its discussion.

It is no doubt true that in some places in India parents have a desire to see their children married in their life time and resort to child marriages as an act of extra precaution, yet this also cannot be denied that the effect of modern education and the influence of Muslim and European civilisation have been significant in this respect. Even if children are married at a very tender age, they are not allowed to meet each other until they have attained the age of puberty. In the Punjab which is mainly a Rural Province, such child marriages are absolutely rare, and I dare say that this must be so in other Rural area also of this vast sub-continent. The evil, if existing, is mainly confined to the town population and there also to a few Orthodox Hindu families. It cannot be imagined that those persons who in good faith believe in the desirability or the utility of the child marriages, would tolerate this unnecessary intermeddling with their private affairs or would ever care to lodge an information with the Police, if their children would offend against the proposed provisions of law. No girl of any respectable family would condescend to submit to the necessary medical examination or would like the exposure involved. Similarly no family in India whatever its status, would take any such steps which would tend to break the happiness of their children's home. In a country like India where a husband is assigned a privileged position and is looked up to, with reverence and respect by his wife, it is very unlikely that he would be permitted to be sent to Jail simply because he does what his personal law allows him to do.

Moreover, this piece of legislation would arm the Police with another engine of oppression, and would give them a free license to poke their nose in the private affairs of the respectable people and to tyrannise over those members of the public who are unfortunately known as a poor class.

The present Code punished such marital intercourse below a certain age and a reference to the past statistics of the country, would make it evident that within the last 70 years this section has never been invoked. Now it cannot be said that the children were not married below the age of 12, nor can it be urged that they had no intercourse below that age. The reason why no such case has ever been started is that none ever cared to move in the matter.

With all respects I am constrained to remark that the Bill has been conceived in Miss Mayo's spirit and Sir Hari Singh Gour would better utilise the brief span of his parliamentary life in a manner more useful to his country.

Oral Evidence of Mr. DIN MOHAMAD, M.A., LL.B., M.L.C., Advocate, Gujranwala.

(Lahore, 19th September 1928.)

Chairman: Your opinion about the Children's Protection Bill has been given here as Annexure A.

A. Yes; that was submitted to the Government of India in April.

Q. Do you suggest that the Age of Consent Act has been ineffective and is likely to be so however much the age might be increased?

A. Yes.

Q. Is this an objection on your part apart from the general objection to legislation in social matters by legislatures, or is it subject to that?

A. Personally I base my objection on two grounds. First of all I do not want any intolerable encroachment on the religious principles of Mussalmans. I do not want Government to interfere with the social matters of its subjects.

Q. Is it because the Government is foreign, or would you object to it even if the Government were a Muslim Government?

A. No, even under a Muslim Government, I would object. No Government should tread upon the principles of the law that has been enunciated by the Quran. I object to any Government interfering with the private beliefs of the people.

Q. Will you tell us what the Quranic law on the subject is? What are the injunctions laid down either for marriage or for consent in the Quran?

A. Every person has a right to marry irrespective of his age according to the Quran. So far as minors are concerned the guardians are permitted to contract them in marriage. In the case of a father he can contract the marriage on behalf of the girl when she is a minor and she cannot repudiate it later. But so far as the mother and the brother and other guardians are concerned, she can if she likes repudiate the marriage and this is known as the option of puberty. As soon as she attains puberty she is at liberty to either confirm the marriage or repudiate it. That is the Quranic law. By implication, you can easily see that the Quran does not enjoin an enabling provision. If anybody is willing to marry a minor girl he can do so. It does not prohibit minor marriages.

Q. Does it not lay down any age at which marriages should be performed or fix any age for consent?

A. No. According to the Muhammadan law, the age of puberty is from 12 to 15. Puberty means not only the appearance of the first menses but something else also. Menses is only one of the factors to consider. It is in the Quran. It is said that at 15 whether a girl attains her puberty or not, she might be considered to have attained womanhood.

Q. Do you think that the Age of Consent as laid down at present, namely 13, is trenching upon the Quranic injunction?

A. Yes.

Q. Do you think there are cases amongst Muhammadans even to-day where consummation of marriage takes place before 13?

A. Personally I think if there is a desire in a man as well as in a woman to meet each other carnally no law should prohibit that.

Q. My question is would you be able to say that there is amongst Muhammadans connection taking place below 13 in spite of the Age of Consent Act?

A. I cannot say that.

Q. Do you think that the law is transgressed as it is by fixing the age at 13?

A. I would most surely say yes.

Q. Do you know of any such cases?

A. I do not know. As a matter of fact nobody cares whether the age limit is 13 or any other thing so far as marital cases are concerned.

Q. Do you say then that the law has been transgressed, but you do not know of any particular cases?

A. Yes.

Q. Supposing the law of Age of Consent has been ineffective, how would you make it effective? Can you suggest any method?

A. As I have said in my reply I would have a minimum age for marriage and not depend upon the Age of Consent.

Q. Do you think it would be more effective?

A. Yes. Marriage is an outward act and everybody knows it. But consent or no consent nobody cares to poke his nose into the private affairs of others.

Q. Suppose we fix a minimum age for marriage of girls, what age would you fix?

A. Fifteen.

Q. And for boys?

A. Fifteen in both cases.

Q. Are you aware of the fact that medical opinion is almost unanimous in this country on this point that a girl of less than 16 is not fit to be a mother?

A. I am not a Doctor, and so cannot fight the doctors; but the facts belie them.

Q. What facts?

A. That marriages are taking place, connections are taking place and girls are begetting children before 15.

Q. And they get all sorts of diseases and die as a result.

A. But they also die of small-pox, cholera and other things.

Q. Motherhood may not be the only cause, but medical opinion seems to be unanimous on the point that girls ought not to become mothers below 15 in their own interests and in the interests of their progeny. Supposing it is so would you still cling to the traditions of the Quranic law?

A. Most surely, because I do not rely on doctors. I think they are wrong and history belies them. In this country people were marrying before 15 and were once living in a golden age. In those days nobody ever thought that early marriage was a source of evils. I do not think that stopping early marriage would prove a panacea for all evils.

Q. You say that "to attribute maternal and infantile mortality to early consummation or early maternity alone is to fall into an error". But nobody says that it is the only cause.

A. Neither have I said that it is said to be the only cause, for I have said earlier "For high maternal and infantile mortality and for cramped intellectual or physical growth are responsible our unclean habits, our extreme indigence, our superstitious bent of mind, our insanitary methods of life and our slavish mentality".

Q. Do you not think that loss of vitality is consequent upon early motherhood?

A. It may be, but it is not such a serious case as to require all these troubles.

Q. Do you think that the Quranic law has in many instances been trenchoned upon by the customary law in the Punjab?

A. Yes; so far as the question of inheritance goes, some of those Zamindars who have been converted from Hinduism have been permitted by the British Government to follow their customs. But it is only so far as succession is concerned. That interference is also being resented by those Mussalmans who know what the law is. But because either on political grounds or because also that it suits those members of the Muslim population who reside in the villages, they are slow to move from the position. But even supposing there is an interference in one respect, that is no justification for interference in another respect. The Quranic law has certainly been trenchoned upon in succession.

Q. I will mention another instance. In Muhammadan law there is no adoption, but adoption is very much common in the Punjab. Is it not?

A. Adoption is also a branch of succession in one way.

Q. In Muhammadan Law there is no injunction against alienation of property. One can sell anything so long as he is alive. But does not the customary law in the Punjab say that without necessity you cannot alienate?

A. It does.

Q. I would ask you, although according to your opinion the Age of Consent has been trenchoned upon Muhammadan Law, what is the amount of resentment and how is it shown?

A. Nobody cares for that, because its violation cannot be detected. It is a dead letter.

Q. From your opinion about Government not interfering should I infer that you probably disapprove of the innovations made by the Turkish Government with regard to the Quranic Law in the practices of the people.

A. I have no first hand knowledge of the matter. I have only read something in the papers, but in my opinion if the Government there have done what they are reported to have done, they have done an un-Islamic Act.

Q. You say that so many classes generally do not observe child marriage and therefore there is no need for any law. But could it not be said that because there are so many who are already having marriages later the age can be raised?

A. My idea is that this would be redundant. Redundant in the sense that it would not be minded by anybody.

Q. Do you mean by redundant that it would be ineffective?

A. No. I mean unnecessary.

Q. If the majority is already prone to have late marriages, could we not allow the law to coerce the minority to the practices of the majority?

A. I have already said that Government should not interfere with an individual's private affairs.

Q. Then do you think that there should be no legislation by the Government?

A. No. The evil was not so large as was attempted to be shown on the floor of the Legislative Assembly so as to require any legislation. At least it is not so, so far as the Punjab is concerned.

Q. On page 2 you say "Cases of rape are so few as compared with other criminal cases.....that it appears to me a sheer waste of time.....to undertake any legislation on this score". But we have got statistics from the criminal reports showing that they are on the increase. Would you give us statistics on the subject in support of your statement?

A. But the question is how old are these girls on whom these offences are being committed.

Q. The question is a separate one. We find from the criminal reports that rape cases are increasing.

A. We are concerned in such cases only in the light of the Age of Consent. The age is the material thing to be considered. The cases of rape on girls whose age is on the borderline, namely 12 or 13 are very few.

Q. How do you get that impression?

A. I have been practising in most of the Central Districts of the Punjab. I generally go there and come in contact with such cases. The impression that I gather from such contact is that such cases are very few.

Q. Have you come across any such cases at all?

A. I have come across cases under Sections 363 and 366 in which the deciding line was how old the girl was, whether she was less than 16 or more.

Q. Have you not come across cases under Section 375 or 376?

A. No. During the last 18 years I have not come across any case within the marital state. As for the other cases the age does not make any difference.

Q. In extra-marital cases does it not matter what the age of the girl who was raped was?

A. It is only when the consent is pleaded that the question of age arises, otherwise not.

Q. In extra-marital cases would you leave any Age of Consent prescribed?

A. It is seldom that the defence plead consent in such cases. They generally deny the commission of the offence altogether.

Q. Would you prescribe any Age of Consent outside marital relations?

A. I hold anybody who commits an offence of that sort a moral leper and would not excuse the offence simply because a girl is more than 16 or 17. Apart from consent or no consent I would penalise it by law. Why should not a law which applies to a girl of 16 equally apply to a woman of 26?

Q. Because at 16 it is conceived she is able to think for herself.

A. Then leave her free. There may be some girls of 15 who are more intelligent than girls of 16.

Mrs. Brij Lal Nehru: In legislation you have to draw a line somewhere. The borderlines will always remain.

A. Yes.

Chairman: In answer to question 4 you state that most people are unaware of the law. Is that so?

A. I mean that they are unaware of the amendment of 1925.

Q. If they are unaware, how would you be in a position to say that there is no discontent at all?

A. I only said that there is a feeling of indifference, but not discontent.

Q. Do you say that even when the age was raised to 13 there was no discontent?

A. There was no discontent because people did not know the law.

Q. Now would you hold, in spite of medical opinion to the contrary, that the age of puberty should in all cases be taken as a index of fitness for motherhood?

A. I have somewhere remarked that it depends upon the constitution of the girl. There are girls who are slender and they may not be fit to be mothers even at 16 or 17. If there are such girls they should not be allowed to become mothers, but fixing the Age of Consent at 13 or 14 does not prevent them.

Q. Is there any other thing which can prevent?

A. Yes, leave it to the good sense of the people.

Q. Among the Hindus are the evils of early marriage and early motherhood larger?

A. Yes, proportionately larger, because there are some Hindus who sincerely believe that if a girl attains the age of 12 she should not be left unmarried. They are under the impression that it is a sort of religious injunction.

Q. Supposing the age of marriage or of consent was fixed at 15, would there be any danger of immorality amongst girls so far as the Hindus and Muhammadans are concerned?

A. No, the girls will be just as chaste as they are now.

Q. You say that there are no classes of people living in this province among whom cohabitation takes place before puberty or soon after puberty. What is your authority for saying so?

A. That is my personal view. I think so.

Q. Is Quranic injunction your criterion for saying that girls will be fit for motherhood soon after puberty?

A. Not that; people are changing their social outlook of life.

Q. What do you mean by soon after puberty?

A. Five or six months.

Q. Can it not be a year or two?

A. Yes.

Chairman: In answer to question No. 19, you say cognizance of marital offences should not be taken unless the girl is the complainant if she is of more than 12 years of age. Do you think any wife, under the present circumstances of the country, whether she be a Hindu or a Muhammadan would make a complaint against her husband?

A. Why should you interfere at all then? That is why I have mentioned expressly parents or guardians.

Mr. Kadri: I know cases in which a father has complained.

A. Might be in your part of the country but not in this part of the country.

Chairman: Do you think that it is the concern of the girl and not of the society or of the parents.

A. Supposing a girl is just physically fit to bear the embraces of her husband, and does not feel any difficulty when she is carnally known by him why should they not cohabit? My idea is that unless she herself is the complainant the law should not be set in motion.

Q. Do you think that it is ever likely that she would be the complainant?

A. That is the way in which I want to check such cases.

Q. Would you say in the case of murder, for instance, that the law should not interfere because the society has nothing to do with it?

A. I am really surprised at the analogy.

Q. The analogy is that murder is looked down upon as a crime against society by the Indian Penal Code just as rape is.

A. Suppose a girl of more than 12 years of age is carnally known by her husband. Their parents have all united just to tie them into a sacrament. Where a sacred relationship has been created and the husband and wife are both fit and if they see each other where is the offence against society? Who is the society or the Government to interfere in such cases?

Q. In answer to question No. 20 you have said in order to obviate all the difficulties, I would much prefer the fixing of the minimum age of marriage. What are the difficulties you are referring to?

A. In case you do not fix the minimum age of marriage but you only fix the Age of Consent, it would mean the police shall have the right just to find out as to whether, in a case where marriage does take place, say, below 12, any cohabitation has taken place. My idea is this. Suppose a girl of 12 is married. Your law lays down, that no husband should carnally know his wife when she is below 13, otherwise it would be an offence of rape. Suppose some husband does it and as it is a cognizable offence the result would be that somebody would go and lodge a complaint to the police and say here is the son of that respectable man who has just gone to his wife and both are below 13 years of age. The result would be that those poor people would be dragged into a court of law. The girl will have to undergo medical examination. She will have to suffer all the exposure and disgrace. My idea is that if you do not want all those difficulties then do not leave it to these persons to be tempted at all. Fix the minimum age of marriage below which they should not marry. If you allow them to marry do not interfere at all provided they have got a natural desire.

Q. Then in 21 you have said I would not dispense with legislation. What do you mean by this?

A. My meaning is that I would not entirely do away with this section of the Indian Penal Code and leave it as it is but I would much prefer that the social reformer should step in.

Q. Would you like that the present law should remain as it is?

A. If it remains it is a dead letter. It will only be a sword of Democles hanging on one's head.

Q. What is the use of keeping a law on the statute book which is not effective?

A. It may not be effective in my part of the country but it may be in your part. The law applies not to one province but it applies to the whole of India.

Dr. Beadon: Can you tell us any cases in which girls have become mothers at 12?

A. Yes, I know of a Brahmin girl who was living just in front of my house. They were two sisters. Both of them became mothers when they were below 13, and they are keeping good health. Their children are still living.

Q. Have you seen any cases of particular trouble or difficulty either to the child or the mother?

A. None whatsoever.

Q. You say for high maternal and infantile mortality and for cramped intellectual or physical growth are responsible our unclean habits, our extreme indigence, our superstitious bent of mind, our insanitary methods of life and our slavish mentality. How do you account for that?

A. It is more a political question than a question which concerns your committee.

Q. No, one witness told us that if a woman becomes a mother when she is very young, she is generally unable to educate her children and I was wondering whether that has got to do something with these unclean habits and other things you mention.

A. Illiteracy alone is not the cause of these evils.

Q. You say, I cannot imagine that any married girl would be victimised by her husband. But quite recently there was a case reported in a paper of United Provinces, in which a girl of 8 or 9 was married to a man of 30. The girl was (extremely) seriously injured. It is all a very pitiable story. Do you think that legislation should not interfere in cases like that? Do you think that society should tolerate those things and law has no right to protect children of that tender age?

A. If in a population of three hundred millions and in the course of 60 years one case occurs do you consider yourself justified in enacting such a piece of legislation. There may be more immoral things going on. There may be more serious aberration of the law. Much more inhuman acts are being performed. No legislation would be called for simply because one misbehaves.

Mrs. Nehru: Only one is discovered. When you start investigating a certain question it is only then that you come across such cases. I am sure many more have taken place but they have not been brought to light.

A. You are perfectly right. But from the start my point is that if there are cases over which people sleep for whatever reasons why should law interfere at all.

Q. Do you mean to say that the children do not need any protection?

A. Their parents are there to protect them.

Q. And where the parents do not?

A. Surely they are more affectionate to the parents than to the British Government. The social reformer should step in. There have been fathers bringing up their children for the last so many generations. They have been keeping them firm and stalwart.

Q. You say that the social reformer should step in. If so will it strengthen their hands if they are given the implement of law to support them in their propaganda? If the right of complaint is given to the reform organizations don't you think that it will strengthen their hands?

A. Personally I am against it. I don't think it will be of any help.

Q. Then in the course of your answer to question No. 17 you call legislation for marital offences a great evil. Have you seen any mishandling of this?

A. The sentence 'it is an unnecessary interference with the privacy of a household' is the key-note of answer.

Q. What I want to know is whether you have seen any misuse of this law?

A. I have not come across any case within the marital state. But from my experience in other cases I know what the police is.

Q. If police is eliminated in such cases?

A. I have laid down the restrictions that I want if it is intended to make it an offence. I do not recommend any punishment except that of whipping and would make the case triable by a summary procedure.

Q. If instead of whipping only a fine is imposed?

A. I would much prefer that the boy should be punished. In the case of a fine all the members of the family will be punished. That is why I

say you should resort to whipping. It will prove more deterrent than imprisonment or fine. The act is the individual act of the boy.

Q. You have been telling us all along that the boy is placed in these circumstances by the society, by the joint action of the whole family and then by the law. Therefore according to yourself those primarily responsible for the act ought to be punished.

A. It is not possible.

Q. You would not substitute fine for whipping. Do you know that Corporal punishment is looked upon with great disfavour in the present day civilized world?

A. So long as it is permitted here in other offences why not introduce here too.

Q. You say that child marriages do not generally take place in the Punjab but at the same time you say there are a few Mussalmans and some Hindus who still believe in child marriage and that in other provinces child marriage still exists. Don't you think it is better to have this law in the circumstances?

A. I am strongly opposed to fixing the Age of Consent. If you once allow them to marry then it would be a very hard thing upon any respectable family if you arm the police or the executive or anybody with the right of investigation.

Q. Supposing we adopt your suggestion and eliminate the police altogether.

A. I will still be against it. You say the parents only would be authorised to lodge the complaint. Naturally the first thing after the complaint has been filed will be that the girl will have to go to the court and she will have to go under a medical examination and who will have to bear all the degnace.

Q. Supposing we have women magistrates to try these cases.

A. Then you must have women court inspectors, women sub-court inspectors and women prosecutors and everybody how are you going to have all these women agencies?

Q. And why not? Women are coming forward in all branches of life and if we can take advantage of that fact in suppressing this evil why shouldn't we do it?

A. Well, I am strongly opposed to it mainly on the ground of exposure.

Q. If we try these cases in camera?

A. Even then I would not agree.

Q. You have stated in your statement that you have not come across any organization or association which has expressed the necessity of amending this law?

A. Yes.

Q. Have you heard of the Indian Women's Educational Conference which for the last two years has been demanding that the Age of Consent should be raised to 16?

A. I made that statement with regard to my own province.

Q. Do you recognise that if the demand has not been put forward in your province it is not because there is no need for it but because people are ignorant and apathetic.

A. I wish to make it known to the sisterhood of India that they are mistaken if they consider that this would remedy all the evils that exist to-day.

Q. It is impossible to remedy all evils by one stroke of the pen. But will it not be a humble contribution towards it?

A. I am not in favour of this legislation.

Q. You have said that so far as interference with marital relations is concerned people affected thereby would not swallow it calmly. What has made them swallow this interference for the last 30 years that the law has been in existence?

A. It has been a dead letter.

Q. If the age is raised to 15 and the measures suggested by you are adopted even then you think it will be a dead letter?

A. I think it will be a dead letter. Legislation has not proved effective at all.

Q. You have said in answer to question No. 10, that if a girl has attained puberty in the real sense of the term she can give an intelligent consent with a due realization of consequences and then you have also said that the age of puberty differs with different girls. Under those circumstances, what age can be fixed for consent inside marital relations.

A. You may fix any arbitrary limit. If you are going to fix any limit at all fix it at 15. I read Hindu law last night and I found that it should be 16 and the Muhammadan law fixes it at 15. To be on the safe side let it be fixed at 15.

Q. What age would you have for extra-marital cases?

A. Not less than 18.

Q. What punishment would you suggest?

A. As heavy a punishment as possible. The present legislation seems to be sufficient.

Mr. Kadri: According to Islam consummation of marriage is recommended after balugh, and it because is open to a girl in certain cases to repudiate marriage before actual consummation?

A. Yes.

Q. So we may take it that Islam generally recommends marriage after balugh?

A. I would not say it recommends but I say it does not prohibit.

Q. According to our law if we postpone the consummation of marriage would it not be an advantage to the girl as she will have more time to exercise her option?

A. Quite so.

Q. This is a circumstance that Islam favours?

A. Yes.

Q. You say that the age for balugh varies from 12 to 15?

A. Yes.

Q. The object of marriage according to Muhammadan law is begetting aulad-i-saleh?

A. It is one of the objects.

Q. It is the chief object?

A. May be.

Q. It means bringing up of children of sound mind and body fit to severe God and His creatures?

A. Yes it is true.

Q. Don't you think that steps should be taken to ensure that children born of such connections should be such as would be physically fit to fulfil those conditions?

A. But the legislature that enjoined it knew it perfectly well but still they did not prohibit marriage between 13 or 14.

Q. Would you accept the principle?

A. Yes.

Q. Our doctor friends have been telling us that according to statistics progeny of early marriages are generally not of strong mind and body?

A. The proportion of sound people in India as compared to unsound is very high.

Q. If people generally realise that according to law consummation before a particular age is penalised don't you think it will have an indifect educative value?

A. I have already submitted that you may fix the minimum age for marriage, but, I object to fixing the Age of Consent after marriage.

Q. Some of our witnesses have said that according to their respective laws fixing the minimum age of marriage is not permissible. They would rather favour the fixing the minimum age for consummation? Why do you say to that.

A. If once you entrench on certain personal laws it is easier.

Q. If we are satisfied that balugh is generally not reached before 16 there will be no obstacle from the religious point of view. Is it not?

A. If you think religious obstacle can be overcome in this way, do it; but, according to Muhammadan law you cannot prohibit marriages at 12.

Q. Some Hindu witness do not favour the marriage legislation, they would rather favour Age of Consent legislation?

A. Even according to Hindu Shastras and Smritis they have a right to marry irrespective of any age.

Q. Generally people do not favour marriage legislation but they have no solid objection against the Age of Consent legislation?

A. From the administrative point of view if you find that it will be safer to launch that piece of legislation, do it. Personally I do not like it.

Q. Would there be any opposition to the use in the age?

A. The society is quite indifferent. It is only the educated people who know that such things are being discussed; they are not interested.

Mr. Kanhaiya Lal: Will you tell us at what age a girl is generally fit for the consummation of marriage?

A. I have already submitted that it depends on other circumstances.

Q. Can you give a standard age limit for that?

A. The standard varies according to the education and the circumstances.

Q. You can take an average. At what age she would be fit?

A. At 12.

Q. Will she be fit to dispose of her property at the age of 12?

A. That is a different matter, but she will be fit to dispose of her person, if she is fully developed.

Q. In other words you are of opinion that at the age of 12 years she would be able to realise the consequences of what she consents to?

A. That is the age fixed by legislature when girls and boys have the power of discretion. According to the law discretion is by that time sufficiently developed and the law holds a girl of 12 responsible for any criminal act.

Q. In other words a person under the age of 12 is incapable of committing a crime?

A. No, between 7 and 12 the question of discretion arises. The law exonerates an infant under 7.

Q. What is the purpose of that discretion?

A. It is for offences dealt with under the Indian Penal Code.

Q. In other words for purposes of criminal law?

A. Yes.

Q. I am asking you generally at what age a girl is fit to think for herself for other purposes?

A. I think 12 will be sufficient.

Q. If she is not fit to dispose of her property at 12, how can you take that age for purposes other than crime?

A. That is an artificial matter altogether. A boy of 18 is considered a minor for the purpose of civil law.

Q. Apart from these artificial limits, will it be possible for you to say that at the age of 12 a girl would be fit to dispose of her property? Will she have sufficient mental capacity to think for herself?

A. The law holds her a minor in that respect.

Q. Is she fit to protect her interests at 12 and also to realise the consequences of her acts?

A. Yes, that is the standard that the law itself has fixed.

Q. Would you apply that standard to other purposes also?

A. Yes, other than those in which the law has fixed a standard.

Q. At what age do you think a girl is able to realise the *pros* and *cons* and assess their value in an intelligent manner?

A. It will be very difficult to fix the standard of intelligence or age limit. In all these cases in which puberty has been attained I would maintain that a girl is sufficiently intelligent to understand the consequences of her acts.

Q. Do you then suggest that instead of 12, the attainment of puberty is the age at which a girl would be fit to think for herself.

A. I have been saying 12, as the law fixes the responsibility for discretion.

Q. Do you mean that the attainment of puberty is the stage at which she is fit to think for herself so far as her own person is concerned?

A. Yes, so far as marital affairs are concerned.

Q. Do you recognise that at that time her body is in the course of physical development?

A. She has been physically developed by that time.

Q. Does she attain full development at that age?

A. Full development is attained at a very late age. People go on growing up to 30 or 40?

Q. Can it be said that up to the age of 30 or 40 they are immature?

A. They are not so mature as at the age of 40.

Q. So far as the disposal of her marital and other rights are concerned is a girl sufficiently mature on attaining puberty?

A. When a girl attains puberty it means that she is developed to such an extent that she must understand and realise all the consequences of her acts.

Q. We are told by medical authorities that the development of the bones or ossification of the parts continues till the age of 18 and that she is not fit for child bearing till that age is reached, would you still say that the attainment of puberty was a sufficient indication that she was fit for child bearing or sexual purposes without any possibility of injury?

A. The law has been put to a practical test. They had not complained of any diseases of child birth so far; they would not beget diseases, if they continue.

Q. Has there been a gradual physical deterioration of the people during the last 50 years?

A. Yes, but that is due to reasons other than early marriage.

Q. Is not early marriage or the early consummation of marriage one of the main reasons responsible for the physical deterioration of the people?

A. I do not believe in that. If it is, it is very minor.

Q. Are you aware that one-fifth of the children that are born in this country die in the very first year?

A. Yes, for other reasons than marital. If you read the treatises issued by the Health Committees you will see that it is due to insanitation. They are not well looked after at the time of child-birth and such other things.

Q. Are you aware that cases are reported in which early cohabitation has resulted in serious injury to the girl (and even in death)?

A. There may be such instances, I do not deny, but they are so few, that legislation is not necessary.

Q. Would it not be a wise public policy to protect young girls from such injury?

A. It may be very wise but it will be ineffective.

Q. Should it not be the business of the legislature to interfere for the protection of young girls against injuries of such a serious character?

A. I do not say that. What I say is that it is not the business of the legislature to protect their acts and interfere with private social affairs of respectable people and if any protection is necessary it is afforded to the girl by her parents.

Q. The protection of girls from injury of that character may well be a question of public policy?

A. I do not consider the evil to be so great as to justify interference by legislation.

Q. You have said that if there is natural carnal desire no one should stop it?

A. I said generally speaking with reference to marital cases that if there is a natural carnal desire in someone, no one should stop it, because it means that the girl is fully developed.

Q. You have recommended the age of 18 in the case of extra-marital cases?

A. Yes.

Q. Why do you make a differentiation between the two when you consider a girl is fit to give an intelligent consent at 12?

A. In one case the law enjoins it, and society permits such a connection, and in the other case it is highhandedness and lawlessness.

Q. Probably you are aware that in other civilised countries an Age of Consent has been fixed to protect young girls in the public interest?

A. It is not necessary. If one thing is done in one country it does not mean that it should be done in others also. That is not the standard to judge civilization.

Q. If in other countries like Europe, America, Australia, etc., there is a law fixing the Age of Consent would it not be desirable to have similar protection for girls here?

A. In those countries conditions may justify it, but here it will be an interference. If civilisation is such as to make it necessary let them have it. I will take no notice of it.

Q. You said that at best you would be in favour of marriage legislation fixing the age at 15. Would that be acceptable to the Muhammadan population generally?

A. Anything that you enforce by legislation is bound to be accepted.

Q. In that case would you be prepared to fix the Age of Consent at 15 too?

A. There is no question of Age of Consent.

Q. There might be people who may be prepared to defy the law and take the risk of fine or other punishment and celebrate the marriage at the age of 12. Suppose cases of that character occur, would you not have a law fixing the Age of Consent?

A. Either piece of legislation would be necessary.

Q. You think there is no necessity to have both to stop consummation in cases where the law has been infringed?

A. If the law is infringed the man will be punished.

Q. If the man is prepared to take the risk and marries a girl before the prescribed age the result will be that consummation can follow, unless there is some other law to stop it?

A. If he is prepared to violate one law, he can violate the other law also.

Q. Do you think that cases do not come to light because public opinion is not sufficiently advanced?

A. No. As public opinion advances such cases will not occur.

Q. Till public opinion advances to that pitch would you have a law to help the growth and development of public opinion?

A. Even if you have no law, it will grow on?

Q. Meanwhile physical deterioration might continue?

A. No, I don't think so.

Written Statement, dated the 12th August 1928, of Dr. R. M. PHAILBUS, C.E.Z., Mission Hospital, Narowal, District Sialkote.

Miss Ryder is always in Australia and I have taken her place, so I have tried to answer the questions as best as I can. Having been in Bengal for so long I am not familiar with things in the Punjab, neither have cases of this kind come to my knowledge much in the last 18 months that I have been at Narowal. I hope the answers I have been able to give will be of some help to you.

Answers to the Questionnaire.

1. No, there is no dissatisfaction as far as I know.

2. (1) In some cases I would still let the age be to 13, for in my experience there have been girls of 15 who when married were found to be with child. If the age is much raised there is the fear of an increase in the number of "unmarried mothers". Amongst the Hindus and Mohomedans, the present mode of living (the whole family living in one or two rooms) leads to such things. Ignorance of results and curiosity leads them to fall into this trouble.

(2) In other cases I would say, certainly make an advance on the present law.

3. Not frequent, but here have been cases, where there has been seduction of girls for immoral purposes and the law was proving effective.

4. (2) By stimulating public opinion would be the most effective way I think.

5. In Bengal where I worked for 35 years, the Hindu girls attain puberty about 12 years or 12½ years of age, in some cases 13 years. Amongst the Mohomedans 13½ years. Up in the Punjab where I have only worked for 2½ years, the girls attain puberty about 15 years of age, some a little earlier and some a little later.

6. In Bengal I found it common.

(1) Before puberty.

(2) Soon after puberty.

(3) Before some of the girls had completed their 13 years. I only remember one case which was brought to court. The girl was only about 10 or 11 years of age, the husband was cruel to the girl and I helped the parents to bring the case into court, and the man got 6 months jail. That was years ago in Bengal, Nadia District.

7. I don't think there was any "religious injunction" about the early consummation of marriage. The parents great aim was to hand over a "pure virgin" to the son-in-law and after that he could do any thing he liked. In some cases where I expostulated with the mother, she did not think it was any thing out of the ordinary.

8. I don't know any thing about the "Garbhadhan" ceremony.

9. In some cases where the girl is well developed as great many of them are it is a sufficient indication of physical maturity for consummation of marriage. I think the age of 16 justifies consummation of marriage without

injuring the health of the girl, provided the girl is healthy and well developed.

10. In Bengal the age of 13, in the Punjab age of 15 or little less.

11. I know by experience (professional) consummation of marriage at the age of 12, without injury where the girl gave birth to a healthy child at the age of 13½ whereas on the other hand years ago I confined a girl at the age of 12½ years, she was so injured that she became an invalid and died at the age of 15 years. Both these cases happened in Bengal.

12. Yes; I do.

13. Yes; there has been a development in public opinion.

14. No.

15. Not that I am aware of.

16. I cannot say.

17. The same punishment as already prescribed.

18?

19. The present safeguards if carried out are quite sufficient.

20. Higher age, would be the thing in public opinion.

21. The progress of social reform by means of education and social propaganda.

Oral Evidence of Dr. (Miss) R. M. PHAILBUS, C.E.Z., Mission Hospital, Narowal.

(Lahore, 19th September 1928.)

Chairman: How long have you been connected with the Mission Hospital?

A. I was down in Bengal in the Nadia District for about 35 years and I have been in Narowal for the last 21 months.

Q. Then your experience is mostly confined to Bengal?

A. Yes.

Q. Have you been dealing with confinement cases all that time or have you been treating all the diseases in women and children especially?

A. I have been doing both especially the latter.

Q. You say in answer to question No. 2 that if the age is much raised there is the fear of an increase in the number of unmarried mothers. Would you not like the age to be increased?

A. Personally I would like the age to be raised to 15 or 16. I came across a couple of cases where the girls at 14 had already children. In one case a husband brought his wife to me and asked me to examine if it was a tumour. He had only been married 17 days back and the girl was pregnant for 3 months.

Q. Was it your experience in Bengal?

A. No, I came across two cases in the last 20 months.

Q. In those two cases, were the two girls well developed?

A. One girl was well developed and was about 17 years; the other girl was not so well developed.

Q. Do you mean to say that your apprehensions would be justified if we raise the age beyond 13?

A. Personally I would like it to be raised. But I have said that it would, taking into consideration the present circumstances, mode of living, etc., of the people.

Q. Has that been your experience in Bengal?

A. Girls in Bengal are married at a lower age, namely 12 or 13. In Bengal a girl at 13 is well developed.

Q. What would you consider to be the age of development in the Punjab?

A. From my experience I think it is about 15.

Q. Have you read Judge Lindsay's (of America) book?

A. No.

Q. You say that in some cases you would not make an advance on the present age, but in other cases you would. What do you mean?

A. I said so, but I would make it 15 or 16 generally speaking.

Q. In Bengal have you come across cases of widows between 13 and 16 becoming mothers?

A. Yes.

Q. How many of them?

A. A good many.

Q. I do not follow your answer to question No. 20. You say that a higher age would be the thing in public opinion. What higher age do you mean?

A. I mean fixing a higher age for marriage. I have come across the case of a Muhammadan girl who was 19 or 20 who was not allowed to marry by her parents. She ran away without consulting her parents. The parents complained against her and brought her back; but she has gone away again.

Q. What is that an indication of?

A. The parents ought to have got her married early.

Q. In extra-marital cases would you raise the Age of Consent beyond 13?

A. I should. A girl of 16 ought to know.

Q. Would you make it 16 in the marital case also?

A. Yes, I would make it 16 in both cases.

Dr. Beadon: In answer to question No. 11 you say that by experience you know that 2 girls were confined, one at 13½ and the other at 12½. Have you met other cases besides these of early maternity?

A. These are the cases that occurred to me at the time of writing the reply. I cannot remember any other cases.

Q. Can you remember from your professional experience any case of girls who received injury to the private parts as a result of early consummation?

A. I met a couple of cases.

Q. We have been told that there have been cases in which there was hæmorrhagic and girls had been consequently brought to the hospitals and so on. In your experience have you ever come across such cases?

A. I had such cases, two in hospitals and two in private houses. These were in Bengal.

Q. Had you any such cases in the Punjab?

A. No.

Q. In answer to question No. 12 you say that early consummation and early maternity are responsible for deterioration. Have you come across cases in which this has resulted in intellectual or physical harm to the mother or the progeny?

A. I do not think that happens except in cases of exceptional neglect. Very often the mother is a young girl and does not know how to take care of the child. The child is periodically fed by the mother and is taken away by the elders of the family.

Q. We have been told that the mother does not usually rear the child, but the elders of the house rear it. What do you think about it?

A. Certainly if the mother is very young, they do so.

Q. Do you think that a satisfactory procedure?

A. No. When a girl has become a mother she ought to know the responsibility and privilege of bringing up her own child; but if the girl is young she does not realise the responsibility.

Q. Supposing the mother-in-law of the girl is looking after the child, do you think that it will react on the child?

A. I think so.

Q. Do you think that children born to young girls are physically and intellectually inferior to the children born to girls who are older?

A. On the contrary I have been surprised to find that the children were very well developed in the case of a woman who gave birth to her first child at 12½. The woman is now 40 and has got well-developed and healthy sons. She had 5 sons and one was reading in the B. A. There was nothing wanting in them.

Q. How many cases like that can you quote from mind?

A. It is difficult to say how many. It is quite a good number.

Q. Is it your opinion that most of these young child mothers are sterile after the 1st or 2nd child-birth and invalids at 18?

A. Some of them are; it is half and half.

Mrs. Brij Lal Nehru: You say that conditions in India are so different that there is a risk in raising the age. What are those conditions which differentiate India from other countries.

A. Usually large families live in one or two rooms and young girls of about 12 or 13 live in those cramped rooms. They are ignorant of these things and curiosity leads them to evil things.

Q. Does that not apply to the poor people of other countries also?

A. No.

Q. In para. 9 you say that where a girl is well-developed, it is a sufficient indication of physical maturity to justify consummation of marriage. How would you take cognisance of this fact when you are making laws for the prevention of consummation before a certain age?

A. I do not suggest that you should take it into consideration when making laws. I have suggested that 16 would be the proper age.

Q. Then although there are certain girls who become physically fit earlier, would you prefer 16 regardless of the fact that it is so?

A. Yes.

Mr. Mudaliyar: Were the two cases you mentioned among the hill tribes?

A. They were in the district of Sialkot. One was of the Bania caste and the other was also a Hindu.

Dr. Beadon: Was that in a village?

A. Both were in the villages. One was in the Badamalle village. The father of the girl was a school-master.

Q. Apart from the fear of immorality becoming more prevalent, would you fix the Age of Consent in intra-marital cases at 16?

A. Yes, because they would realise motherhood better then.

Q. What is your experience of other countries?

A. I have not been to other countries; but I have come to know the conditions there from reading books.

Q. Do those conditions that you refer to in paragraph 6 continue at the present time?

A. No, the age is gradually increasing.

Q. In question 6, sub-section (1) you say that in Bengal it is common before puberty. Are you referring to recent periods also?

A. I left Bengal in 1926. Till 1925 I came across such cases.

Q. Were those cases you came across intra-marital cases?

A. One was; the other was before maturity.

Mr. Kadri: You say that you had come across a case in which you helped the parents of the girl to bring the case to court. What was the cruelty?

A. The girl was forced to live with the husband and she was very badly injured because of the connection. The mother-in-law was very unkind to her. The girl was therefore not willing to go to her husband. The mother-in-law helped the girl's husband throughout.

Q. Is that the only case of that sort which you came across?

A. I remember one case in which the girl was about 16. She was forced to live with her husband against her will so much so that she was in mortal fear of him. One of the relations chloroformed her, so that her husband might come to her.

Q. What was the age of the husband?

A. I do not remember.

Q. According to civil law a girl is a minor till she is 18. She cannot enter into contracts of any kind. In view of this provision in law, do you think that before she is 18, the girl is competent to will away her chastity?

A. I should think that a girl of 16 will know the consequences of her consent.

Mr. Kankhaiya Lal: In Bengal you say that consummation is common before puberty and soon after puberty. Can you tell us the percentage of cases in which there is consummation before puberty?

A. No; I cannot give the percentage of such cases. Our advice as medical people is sought only in some special cases and there are many other cases which are unknown.

Q. Can you tell us how many such cases came before you?

A. It is difficult to say now. It may be 2, 3 or 4.

Q. In order to make the law effective, would medical men and women be willing to report cases in which the law has been infringed as regards consummation of marriage?

A. It is rather a delicate question. Personally for instance, if somebody calls me and asks me to keep the matter private, I cannot make a report. I will not go and report the case unless the parents themselves were anxious and cite me as a witness.

Q. Supposing the law makes it obligatory, would you not do so?

A. If the law makes it obligatory, it would be altogether different.

Q. Would the medical profession as a class be willing to report and thus help to make the law effective?

A. There may be some in the profession who may do so, but a great many would not.

Written Statement, dated the 10th August 1928, of Sh. LEELAYATI KOHLI, Hut No. 204-C., Gulmarg (Kashmir).

1. Yes.

2. (ii) I would advance the Age of Consent from fourteen to sixteen for the mere fact that the regenerative organs of a girl are not fit for their natural work at the age of fourteen. Conception at that age is harmful

to both the mother and the child. At the age of sixteen the girl is ripe for motherhood at least in tropical countries.

5. Between thirteen and fourteen. My limited experience and observation shows that the age of puberty does differ with different classes of society. In the case of girls use to hard manual labour and simple work (not necessarily underfed) the signs of puberty do not appear even after fourteen.

6. (i) Not very common.

(ii) Yes.

(iii) Not very common.

Not to my knowledge.

7. Yes. I do not know of any authoritative religious text of the Hindus recommending early marriage, but it is the prevailing belief of the Hindus that it is their paramount religious duty to give away their daughters in marriage when on the verge of puberty.

I do not know of any shastric injunction prescribing a penalty, save the social pressure exerted on the ignorant husband or the parents-in-law

8. Yes. Yes, it coincides with the consummation of marriage.

9. No. On no account whatsoever. For the rest of this query refer to No. 2 above.

10. In my opinion a girl is not capable of realising the consequences of cohabitation before she is nearing eighteen.

11. Yes, several cases. In three cases that I can recall at the moment of writing this note, the young mothers did not survive their first confinement. Their ages varied between thirteen and fourteen. In two other cases where the age of mothers at first confinement was about or a little beyond fourteen, the children were by no means physically strong nor intellectually sharp.

12. Yes, to a very great extent.

13. Yes. I do not know if it is particularly the result of the amendment of the law (1925) but it has certainly kept pace with the progress of education, both of girls and of boys. It is spreading from the educated to the non-educated classes.

14. Yes. But it is not to that extent as it was about a decade ago.

20. No, the other way about. In my opinion legislation fixing the minimum age of marriage will be more effective than any penal legislation fixing a higher Age of Consent for marital cases. In my part of the country people would be more satisfied with the fixing of the minimum age than the raising of the age of consent, as the former is more practicable than the latter.

21. Yes. In my opinion, penal legislation will certainly secure the object in view, much earlier and more effectively than the efforts of all the reforming bodies put together. In one case there is the terror of the law; whereas in the other, the people can afford to ignore the resentment of their more enlightened brethren. Moreover social progress is deadly slow.

Oral Evidence of Sh. LEELAYATI KOHLI, Lahore.

(Lahore, 19th September 1928.)

Chairman: Will you let me know if you are connected with any social reform organization or any ladies' association, for instance the Women's Conference that was held at Delhi.

A. I am not connected with any particular society. I was elected as a delegate to the Women's Conference but I could not go.

Q. Have you occasion to move amongst Punjabi ladies?

A. Yes, a good deal. I move among the middle class and the high class both. I belong to Behra and I have often to mix with middle class ladies of that place socially.

Q. In answer to question No. 14 you have said "Yes, it is not to that extent as it was about a decade ago." What does that mean?

A. I know, in Behra, even in my own family there have been cases where the girls have been married when they were 11. But now the town people are learning and they are preferring to have marriages late, at 15 or 16.

Q. Is that the general impression among the middle class ladies that they would like the enhancement of the age?

A. I think so. Because they have realised the evil consequences of early marriages.

Q. Do you think that is the result of their experience of the evils of early marriage?

A. I think so. I can give you instances where they have really felt that if they had not married their girls so early all that trouble would not have arisen.

Q. How many cases do you know?

A. I have known 3 cases.

Q. In these three cases do you think the mothers were sufficiently grown or whether they were weaklings?

A. They were neither weaklings nor particularly grown. One was 13 and the other one was 11.

Q. Were they well developed?

A. In two cases they were well developed and the girls were in good health, but they died in the first confinement. They succumbed all the same. In another case the children died, the mothers survived, but they are life-long invalids.

Q. In answer to question No. 2 you say a girl is not fit to be a mother at 14. She is only ripe for motherhood at 16. Would you accept 14 as a step towards 16?

A. I do not want 14 at all. If some of the middle class people think that it will be too big a step, then it may be put at 15. I do not want 14 in any case.

Q. 14 is the age when most girls attain puberty, don't you think that once this pre-puberty dread disappears it does not matter what age we fix?

A. But up to fourteen they have not sufficient time to learn what is in store for them. They cannot have any education with regard to their duties as mothers. They don't get sufficient time for their girlhood.

Q. In answer to question No. 20 you have said people would be more satisfied with the fixing of the minimum age than the raising of the age of consent. Do you mean that people would take it more willingly?

A. Yes. In my part of the country there is no *Maklawa* ceremony. Girls are generally married at 11, 12, 13 and 14. As soon as a girl is married she has to live with her husband immediately. There is no restriction. It may be even against the wishes of the relatives. The mother-in-law wishes that she should be in the house. So that, from my point of view there is no Age of Consent.

Q. Do you think there is any likelihood of there being dissatisfaction among the people?

A. There will be in some parts. But after sometime, say 10 years they will become used to it.

Dr. Beadon: Can you give instances of intellectual or physical damage from early maternity either to the mother or the child?

A. I know of instances where the children are quite dull, not intelligent at all, unable to study and they are weaklings both physically and intellectually. These are cases where they have been married between 13 and 14.

Q. Have those women more than one child?

A. Several.

Q. Have you noticed this with regard to all these children?

A. In one instance I know two are dull and the third is not dull.

Q. Can you tell us whether the injury was at the time of birth?

A. I can't say.

Q. Do you know whether labour was easy or difficult?

A. I only know that some of the children are more dullheaded than others. I don't definitely mean any mental defect.

Q. Have you noticed any trouble with regard to mothers? Some of the witnesses have told us that even mothers are likely to be invalids before 18. If so, how many cases have you noticed?

A. I can't recall at this moment. I know about two cases.

Q. At what age did the girls become mothers?

A. Below 14. They are now 18. They became practically invalids.

Q. Have you noticed any cases in which there was mental deterioration in the mothers? (Some people tell us that the mothers become mentally stupid.)

A. There is one woman who I think is comparatively speaking dull. They do become short statured. Their growth is stunted.

Q. In these cases have any of these mothers got sisters?

A. In one case they are three sisters. Two of them were married early and one was married late. The eldest is fortunately not dull. She is not keeping bad health. In the case of the second her children are dull, she herself is an invalid. The third was married at 16. Her father died and there was no one to look after and they had to wait. She is quite intelligent and fond of learning. She is about 19. She has got energy. The other two on the other hand are dull. One of them was married at 11 and this effect is, I think, of early marriage.

Mrs. Nehru: Have you any experience of the villages? Is there any improvement amongst them?

A. In Behra there is great improvement. People are learning. I have already told you they do not marry early.

Q. Have you any experience of any other village?

A. No. But I can say of the people of Lahore. There is lot of improvement. This opinion is based on the fact that more children are now educated than before. People are realising that if they marry their girls late they would be happier and they would live.

Q. Supposing marriage legislation is not possible, do you think any good will come out of the raising of the Age of Consent?

A. I think so.

Q. Do you think it will be effective?

A. I think so.

Q. Do you think cases will be brought to light, tried and punished.

A. Yes. But it should never be for the police to interfere in these cases. Police should be eliminated. Otherwise the sanctity and purity of the Indian household and privacy would disappear.

Q. Do you think social reform movement is strong enough to back such a legislation if it is enacted?

A. I can't say.

Q. Do you think if the right of complaint is given to certain social reform societies, they will be able to work?

A. I think so.

Q. Won't they be looked upon as spys and bad people?

A. They will fight it out. I think it will be possible.

Mr. Muddaliyar: At what age do marriages generally take place in your part of the country?

A. At 9, 10 or 11, say.

Q. Do you think in that case fixing the age of marriage at 16 would be acceptable to the generality of the people?

A. If I were to give my own opinion I would say 16 is the proper age. But I fear lest some may not accept it I would lower it down to 15, but not 14 in any case.

Q. Do you think 15 would be more acceptable? Do you think that the difference is so vital?

A. I think so. 16 is for the majority of the people. They start from 10 and 14 is the general age.

Q. In answer to question No. 6 you state, "not very common". Have you come across any instances. Is it prevalent to any great extent?

A. As I have said after marriage there is no question as to whether it is before or after puberty.

Q. Do you think a large number of marriages do take place before 13 and the girls are sent away to the husband's house?

A. It is the prevailing belief of the Hindus that it is their paramount duty to marry their girls before she begins to menstruate. It is regarded as the greatest sin to keep a girl in the house after puberty.

Q. Is that belief prevalent among all classes of Hindus, or is it confined to any particular section?

A. It is more in the Brahmins and the Banias than in others. In U. P. it is even stronger. I know of people in Jagadri. It is this belief in religious injunctions against marriage after puberty that is responsible for early marriages.

Q. Is that belief with regard to marriage only or with regard to consummation also?

A. That question only arises where Maklawa ceremony also is celebrated, where the girl is sent to the husband's house after 5 or 7 years according to the age of the girl at the time of marriage. But in our part of the country this thing does not happen at all. Both things are practically the same. That question does not arise.

Mr. Kadri: In answer to question No. 10 you say, in my opinion a girl is not capable of realising the consequences of cohabitation before she is nearing eighteen. In view of this what is the minimum age which you would fix for extra-marital relations?

A. 18.

Q. Are you in touch with Mohammadan opinion?

A. They marry at a very advanced age and I do not think that there would be any dissatisfaction among them.

Q. Don't you think there will be any dissatisfaction among them if the Age of Consent is raised to 16?

A. No, I do not think so. I know of several cases; they do not mind whether the girl is of 16, 17 or even 22 years.

Q. We are told that so far as orthodox opinion is concerned they would rather have the Age of Consent legislation than the marriage legislation? They have quoted Hindu scriptures on the point. What is your opinion about it?

A. I prefer marriage legislation.

Mr. Kanhaiya Lal: You said that early marriage was common in your part of the country?

A. Yes.

Q. Has there not been a great advance during the last 10 years as regards the age of marriage?

A. Yes, there has been.

Q. Now do marriages take place more largely after the age of 13 or 14 years in the Punjab?

A. Yes.

Q. Do they even take place very largely after the age of 17 or 18 among the Hindus?

A. Yes. Now girls go to school from 8 to 14 years and their mothers do not think of marriages at those ages.

Q. Am I to understand that the evil of early marriage, if it can be called an evil, has now practically disappeared from the Punjab?

A. I cannot say, I think it is disappearing. It will disappear by and by. It is now going on from the high to the lower classes.

Q. Are there cases of marriage in which money is paid for the girl?

A. Yes, among the lower classes.

Q. You have said that as soon as the marriage is celebrated, the husband or the husband's party is anxious to take the girl away. Is that peculiar to cases in which money has been paid?

A. I have no knowledge of that.

Q. In cases where there is a marriage without payment, is there the same desire to take the girl away immediately?

A. Yes.

Q. What is the average age of marriage now?

A. 14 or 15.

Q. You are in favour of marriage legislation?

A. Yes. Because I feel that you will not be able to secure the end in view unless there is legislation.

Q. If there is no marriage legislation would you be in favour of penal legislation fixing the Age of Consent?

A. Yes.

Q. If the marriage legislation fixes the age of marriage lower, would you be in favour of penal legislation fixing the Age of Consent?

A. Yes.

Q. Even if there is a marriage legislation fixing a proper age limit, there might be cases of infringement of the law. If so, in order to support marriage legislation would you have penal legislation fixing the Age of Consent as a second string to the bow?

A. Yes.

Q. You want that the police should be eliminated altogether from the investigation of these cases?

A. Yes.

Q. Who is then to investigate these cases, if the police is not to do that work?

A. The Court can do it.

Q. Who is to make the complaint?

A. Social reform^a bodies.

Q. Would you like to constitute vigilance societies to take up the work?

A. Yes, or women's association to take up the work.

Q. Is not the marital offence generally considered an offence of a technical character?

A. Yes.

Q. And there is often a large amount of sympathy with the husband?

A. Yes.

Q. Do you think that these bodies are likely to be very active in reporting these cases?

A. They will of course avoid to do it.

Oral Evidence of Rani NARENDRA NATH (Lahore).

(Lahore, 19th September 1928.)

(Vernacular.)

Chairman: So far as you know do women like marriages to take place early?

A. It has become a custom in higher classes (that people do not) have early marriages.

Q. But are there people who like to marry early?

A. Yes.

Q. Are the higher classes comparatively larger in numbers?

A. No, they are comparatively few.

Q. Do educated classes marry early?

A. No. It is the lower classes who have a tendency to marry early.

Q. If the Government enacts a law to the effect that marriages should not take place before a certain age, will those people who marry early accept it or not?

A. If the Government enacts a law they must abide by it.

Q. How should they be made to agree?

A. Just as Raja Ram Mohan Roy stopped Sati. That was a Dharmik thing and if that could be stopped, early marriage could similarly be stopped.

Q. If there is a legislation, fixing the minimum age for marriage will people oppose it?

A. I think people will not be opposed to it in the Punjab.

Q. What do you think should be the marriageable age for girls?

A. It should not be less than 16. It may even be 17 or 18. In the case of boys it should not be less than 23.

Q. Do those girls who are married early suffer? Do you know of any such cases personally?

A. Yes, they suffer but I cannot explain it by examples. I know of girls and boys who had married early and fell a prey to diseases such as anæmia, tuberculosis, etc.

Mr. Kanhaiya Lal: You have said that the marriageable age should be fixed at 16 or 17. Have you suggested that age for the urban or for the rural population?

A. I suggested that age for the urban areas. It should be more for the rural areas.

Q. If the age of marriage in villages is raised higher is there not a danger of the girls being seduced or abducted?

A. Even married girls can be seduced.

Q. But in that case the offender can be pursued and prosecuted by the husband; but in the case of unmarried girls they might be taken away and married elsewhere. In view of these circumstances, would not 16 be more suitable than 18?

A. I think 18 is quite sufficient. Girls up to 18 should be protected by law.

Q. If we cannot legislate fixing the age for marriage, would you fix the Age of Consent?

A. I do not agree to any Age of Consent within the marital relation.

Q. But you would fix the marriage age at 18?

A. It should be 18; but if it is not possible then it should be 16.

Q. Is the *goana* ceremony observed in the Punjab?

A. Yes.

Q. How long after the marriage, does *goana* take place?

A. I cannot say exactly; it is different in different castes and communities.

Written Statement, dated the 14th August 1928, of Mr. ANAND SINGH, Secretary, Singh Sabha, Sheikhpura.

1. Of late years the society has made rapid strides towards civilization. With the advent of education the public opinion has greatly advanced, and the Swadeshi and Akali movements have educated the masses to a great extent. The public is, therefore, in favour of a change of law.

2. The raising of age from 14 years to 16 years will be a change for the better; being in consonance with the public opinion it will be acceptable with applause.

3. The crimes of seduction or rape are frequent. The amendment of 1925 has done some good in this direction, for the offenders cannot escape so easily as they used to do before. The penal legislation with deterrent punishment along with the reformatory education in general and in case of criminals in particular will only cure the evil. The force of the public opinion will be only sanction for rooting out the evil permanently.

4. To the marital relations the change has proved somewhat effective. The legislation together with extraneous circumstances, e.g., facility of education to the masses has reduced the crime to a great extent but has failed to make it extinct altogether. To remedy the little evil that is left the penal legislation will provide an immediate, more appropriate and more effective remedy than the dilatory methods of education to the masses. No doubt the education will in the long run have a more lasting effect; but to remedy the evil immediately the effective remedy is the fear of penalty for breaking a law. The public opinion should be brought to the level to appreciate the change, to avoid the fear of tumbling down of the whole work of ages when the rod is removed. In our humble opinion the Sarda's Bill will afford an adequate remedy.

5. The girls usually attain puberty on the completion of 16 years, but in the case of High Caste Hindus and educated classes the puberty may be delayed little longer. In menial classes the girls having no worldly anxieties often attain puberty before the said period. But to do a greater good to the society as a whole this little evil to the menial classes may be ignored.

6. The cohabitation is common. Many challans come to court and adequately dealt with, but most cases are connived at by the public fearing that the publication will bring a bad name for the family.

7. According to Hindu tenets and principles the girls ought not to be married unless they are 18. The only sanction behind it is the force of public opinion. The Sikhs also favour this age.

8. The gaona ceremony is usually performed when the bride is brought to the father-in-law's house. No limit of age attaches to this ceremony. The Sikhs have given up this ceremony altogether.

9. In this hot country the attainment of puberty may be considered to be a sufficient justification for the consummation of marriage. The girls have to do the whole household work which makes them physically strong and fit on the attainment of 16 years.

10. The lust is a necessary evil, the longer it is postponed the better it will be. The girls may attain the age of discretion before 16 years but she cannot realize the consequences and their effect upon her health. So the minimum age ought to be 16 years.

11. Though I cannot speak of any case from my personal knowledge but still from the table talk and other rumours I can say that cohabitation before puberty has done a tremendous loss to the society.

12. The early consummation is responsible to a large extent to maternal and infantile mortality. The public opinion is not much in favour of having a large family. The couple when married early becomes tired of it soon and weeps over its inability to support the family. The only alternatives left to it are "to cause miscarriage or kill their children when born" by various methods or to stop the procreation by same remedy. The first method is generally resorted to in the rural areas.

13. The public opinion strongly recommends rather demands the raising of the age limit.

14. The mothers consider it their parental duty to get their children married. Some rustic mothers considering the shortness, the transitory nature of life, the scarcity of brides for the poor boys and the difficulty to find out good husbands by the well-to-do family favour early marriages. But education has gone far to remove the evil. The Sikh mothers have nearly given up the idea of giving their children early in marriage.

15. Great difficulty is experienced in determining the age. The only evidence is that of a medical expert which cannot be quite appropriate. The municipal records ought to contain the name of the born child and they must be brought upto date. With every census the age record ought also to be prepared.

17. (The marital offences and offences against the husband the particular individual, and the gravity may vary according to the circumstances of such case.) The extra-marital offences are offences against the society in general and should be harshly dealt with. In this class of cases the minimum punishment for five years ought to be provided. The offence by the husband against the person of the wife should be leniently dealt with for here the consent is an implied one.

18. The offence by the husband against the person of the wife may be dealt with summarily and punished with fine only. But in the other case the trial in all cases ought to be regular.

20. The fixing of minimum age of marriage will be easily acceptable by the public. It will be very helpful in bringing up strong healthy children.

21. Both the remedies ought to coexist, and go side by side. Penal legislation may have an effect for a short while, but to gain permanency education and social propaganda are necessary.

**Oral Evidence of LACHMAN SINGH, President, Singh Sabha,
Sheikhupura.**

(Lahore, 19th September 1928.)

(Vernacular.)

Chairman: I understand you are the president of the local Singh Sabha.

A. Yes.

Q. Is your Singh Sabha connected with the Khalsa Dewan?

A. Yes.

Q. How many members are there in the local Singh Sabha?

A. The Sheikhupura Singh Sabha has 165 members.

Q. Your opinion will be the opinion of the Singh Sabha.

A. Yes.

Q. What is the general age at which girls attain puberty?

A. It is different in towns and villages. In the towns the girls attain puberty earlier and in villages they attain it later. The difference is only of one or two years. The age in the cities is about 13 and 14 and in villages it is from 15 to 18.

Q. Do marriages take place after puberty among the Sikhs?

A. 95 per cent. marriages take place after puberty.

Q. Do I understand that there are no mothers at 13 and 14 in the villages?

A. There are no mothers at that age.

Q. What age would you fix for marriage?

A. At least 16 years.

Q. At present the Age of Consent is 13. Would you increase it further? If so, to what extent?

A. I would fix it at 16. But the law has been ineffective. It has remained a dead letter. It is only on paper.

Q. Would you like to fix the age of marriage or the Age of Consent?

A. Age of marriage.

Q. Why do you fix marriage age at 16?

A. In order to prevent any diseases. A girl is not ripe before 16.

Q. Are you of the opinion that in cases where marriage takes place at a very early age the women suffer in their health?

A. I am a doctor and I have personal experience of this. Those who marry early suffer from many diseases. Early marriage is one of the potent causes of their decay.

Q. You have said that on account of Swadeshi and Akali movements there has been a great development of public opinion. What is the connection between the two?

A. We preach on the platform the advantages of late marriages and inform the public of the evil consequences of early marriages. The Akali movement is there to root out this evil also.

Q. Is the number of child marriages increasing?

A. Their number is falling in Sheikhupura and Lyallpur and the adjoining places.

Q. At what age do marriages generally take place among the Sikhs?

A. Not before puberty, i.e., at 15 or 16 in cities and at 16 or 17 in villages.

Q. Why are you in favour of 16 then?

A. It is for those who do not follow it. It has become a custom with them. But the custom is not so strong as before.

Q. You say extra-marital offences should be harshly dealt with. Is the punishment now provided for not enough?

A. 10 years is not enough. Transportation is enough.

Q. Has the amendment of 1925 produced any effect?

A. The amendment of 1925 has had great effect. Legislation and education both are necessary. During the last few years the amendment has brought about a marked change.

Q. Supposing marriage legislation is not passed. Do you think the age of consent would have any effect?

A. No. But Sikhs would not be against it.

Q. In which class of people is early marriage common?

A. Rich people marry their girls early and poor people do not. Education is the great solvent.

Mr. Mudaliyar: You fix the age of 16 as the age of consent and the age of marriage because you think that is the age at which girls attain puberty.

A. A girl is fully developed at that age.

Q. In answer to question No. 7 you say according to Hindu tenets and principles the girls ought not to be married unless they are 18. Can you cite those Hindu shastras?

A. No. I cannot.

Q. Again in answer to question No. 11 you say, "from table talk and other rumours I can say that cohabitation before puberty has done a tremendous loss to the society." Is there a very large number of such cases?

A. They are fewer now. But there is a fairly large number.

Q. In which class do you find these cases?

A. In nearly all castes you find these cases.

Q. In answer to question No. 12 you say "the only alternative left to it are to cause miscarriage or kill their children when born by various methods or to stop the procreation by some remedy. The first method is generally resorted to in the rural areas." What is the first method you are referring to?

A. These are the two methods resorted to, infanticide or causing miscarriage.

Q. You think infanticide is still practised to limit the family?

A. I can speak of my own part of the country. They do not want to increase their families on account of economic and other causes.

Q. Is the infanticide of girls or sons or of both?

A. Girls more than boys.

Q. Is that your experience?

A. Yes.

Q. How many cases have come to your notice in one particular year?

A. 10 to 15 cases.

Q. Is that among Hindus or Sikhs?

A. That is among both communities.

Q. In answer to question No. 16 you say municipal records must be brought up-to-date. What exactly do you mean?

A. At the time of birth the name of the child is not given. It is given sometimes later. The name is given generally within 13 days of birth. Among the Arya Samajists it is done later. This name should also be reported to the birth registrar.

Q. You suggest that the husband might be fined only. Why do you suggest that the punishment should be lightened to fine only?

A. The fault is not of the husband. The fault is of the parents.

Q. The husband may be 25 or 30 years old. Do you think the fine will be enough even then?

A. It is the fault of the parents first and then the husband. I think fine is enough.

Q. Would you advocate fine only even if the child is below 12 years?

A. I will give the discretion to the magistrate.

Mr. Kadri: The law of 1925 has not been effective. Would that be effective if we increase the age to 15 or 16?

A. Widest publicity should be given to the law. Pamphlets should be distributed into the villages. Lambardars and Zaildars should be made responsible for this work. Panchayats should be established in every village and town.

Q. Are there any panchayats in the Punjab?

A. There are some, they are for arranging for marriage and not to stop marriage. They have not been recognised by Government.

Mr. Kanhaiya Lal: Among the Hindus at what age do marriages take place generally?

A. Between 13 and 14.

Q. Can you suggest any measures for bringing cases of infringement of the law to light?

A. I cannot. As long as early marriages are not stopped, there is no remedy. In many states the law has already been passed.

Q. Suppose there is no age of marriage law, and there is an age of consent law only. Would the public be prepared for it?

A. It won't stand in the way at least.

Q. If all marriages are registered, and the names of the marrying parties are given with their ages and other particulars would that be helpful?

A. I don't think the Sikhs will accept it. They do, as is laid down in Guru Granth Sahib.

Oral Evidence of Mr. GANGAT RAI, Bar.-at-Law, representative of the Arore Bans Muk Sabha, Lahore.

(Lahore, 20th September 1928.)

Mrs. Beadon: What is your position on the Municipal Committee here?

A. I have been a member of the Municipal Committee for 32 years. I have been a senior Vice-President of the Sheikhupura District Board, and even now I am a member of the Board.

Q. Where is Sheikhupura?

A. Sheikhupura was formerly part of Lahore but now it has been separated. I am connected with the social body called the Arore Bans Muk Sabha. This Sabha is a social reform body consisting of Hindus called Aroras. The Aroras are one of the three chief communities in the Punjab, namely the Brahmins, the Katris and Aroras.

Q. How many members are there in the Sabha?

A. The Sabha has got branches in almost all the districts and towns of the Punjab, and there are one hundred such branches. There are about 300 members in the head Sabha.

Q. Has the Sabha been in existence for a long time?

A. The Sabha has been in existence for the last 40 years, and it was registered some 12 years ago.

Q. Does your Sabha work among the village people?

A. Yes, it works both among the village and the town people.

Q. Do people who work there come in touch with Hindus only or with Muhammadans also?

A. Hindus only.

Q. Do you think that there is a great deal of child marriage in the villages?

A. It is declining since the last 10 or 15 years.

Q. Why?

A. Because in the first instance the parents of the girls particularly want that the husbands of their girls should be earning young men and that they should not be dependent upon the income or be always under the protection of their parents.

Q. Do you find this in all classes?

A. It is generally found amongst all classes, both urban and rural.

Q. What is the marriage age amongst the boys and girls of the members of your Sabha?

A. This Sabha to which I belong counts about $\frac{1}{3}$ of the population of the Hindus of the Province. The Sabha passed resolution after resolution and fixed 14 as the marriageable age for girls. In 1925 it was raised to 15 and last year to 16. In the case of young men it is not less than 20.

Q. Do you think that there is any dissatisfaction amongst the members of your community with the age of 15?

A. No.

Q. In your Sabha how many marriages have been celebrated since 1925?

A. I have myself attended a number of marriages; it may be 20 or 30. Except in Amritsar the marriages were all of girls of not less than 15.

Q. We have been told that if marriages are performed too late there is a great fear of immorality amongst girls. What is your opinion?

A. Yes, there is that sort of fear in the case of girls who have no occupation. They are always at home. After 13 they see all married people amongst them. They have themselves no other occupation than sitting idle. So in every way their attention is directed to the particulars in the life of the married persons. But if girls are sent to school they are otherwise occupied.

Q. Do any of the members of the Sabha object to the age being raised?

A. Nobody has ever objected because we hold conferences in the different parts of the province. This question is laid before a large number of people including the whole community and their number is sometimes several thousands. I do not think there is one in a thousand who objects to the age being raised.

Q. Can you tell us if there have been cases of early consummation in which any damage has occurred?

A. Yes, I have known of early consummation and the troubles attendant with it, but no case of serious injury has been brought to my notice.

Q. In such cases have you noticed among the progeny any particular defect?

A. Yes, the children born to mothers who were married at not more than 13 years of age were weaklings, and the mother also was weak.

Q. Is it because of the raising of the marriage age that the joint family system is going down?

A. Even independently of that.

Q. Why?

A. It is the teaching of the maxim "Heaven helps those who help themselves"; or everybody for himself. Nobody wants to remain under the protection of the head of the family. That is the idea.

Q. You have told us that public opinion is in favour of the raising of the marriage age. Can you tell us whether people are in favour of the age of consent being raised also?

A. To tell you the truth I do not think many people know what the age of consent is. The first Act was passed in 1891 and at that time there was a meeting. Since then nobody here in the Punjab has ever heard of it. So that in my knowledge no case under the Act has ever come to the court.

Q. What is the reason?

A. In the first place marriages did not take place before 12 and consummations did not take place before 14.

Q. But don't you think there were breaches of the law?

A. There were.

Q. Then, what is the reason they were not brought to the notice of the courts?

A. The parents of the girl or the boy would not bring such cases to the notice of the court. They think it is a disgrace to the families. The second reason is that only a few lawyers know about the age of consent.

Q. Do you think there is any defect in the framing of the Act which is responsible for its being ineffective?

A. No; but it is difficult to put it into practice or enforce it. The parents of the parties do not like the matter to be taken to court, and the neighbours do not bother themselves about it.

Q. Do you think that if changes are made with regard to punishment, for instance if the punishment is reduced to fine only, it would make any difference?

A. No; because the parents of the girl would not drag their son-in-law into court. For some time until the new generation is imbued with this spirit it will be so.

Q. Do you not think women feel when cases like that take place?

A. They only feel, but they do not take action.

Q. Can you give any reasons for it?

A. They think that it is a disgrace to the families of both sides.

Q. Do they think that the disgrace lies in the boy being sent to prison or in the fact becoming publicly known?

A. Both.

Q. If these are eliminated, do you think the working of the Act will be facilitated?

A. Yes, but there will be some difficulty.

Q. Supposing imprisonment is eliminated by reducing the punishment to fine only?

A. Even then there is the dragging into court.

Q. If trials are held in camera and courts are formed of lady magistrates both your objections will be eliminated.

A. It will only serve as a propaganda. You cannot get cases unless the parties are at loggerheads or there is a grudge.

Q. Is Muklawa ceremony current in the Punjab?

A. No; it is only nominally current and is performed immediately after marriage.

Q. And when does consummation take place?

A. Consummation now takes place sooner than it used to be formerly.

Q. Do you mean at an earlier age?

A. No. I mean soon after marriage. But the age of marriage has been raised by public opinion.

Q. Muklawa ceremony was postponed so long after the marriage formerly that in those days actual consummation took place later than it does now. Is that not so?

A. I do not agree. Generally, formerly amongst the Hindus the marriageable age was 12 to 13 for boys and 9 to 10 for girls, and Muklawa was performed about 3 years afterwards. But now marriageable age has been raised much higher and therefore consummation is not earlier.

Q. Is it then the same as it was formerly?

A. No, a little later.

Q. As you think that the law has not been effective so far, would you give us any suggestions to make it effective?

A. I have been reading the papers and the suggestions for having lady magistrates and lady assessors belonging to the same community as the people against whom the complaint is made may be adopted.

Q. Do you think any means can be devised for separating the boy and the girl till the prescribed age by penalising Muklawa or Gaona?

A. No.

Mr. Mudaliyar: Do you think that in the Punjab there is still prevalent the custom of early marriage?

A. No. It has decreased very much. It is now confined mostly to people who are busy in small trade. For instance take the city of Amritsar which is a very big city. People are very well off. But child marriage is much more prevalent there than in any other town in the Punjab.

Q. What do you attribute it to?

A. Mostly people are not educated. There are not many social societies working there. Ladies have nothing to do at home and they are always talking of marriages of their children. They have got servants for cooking and other household work. This work which is now regarded as work of the menials and the servants was done by the ladies themselves in the olden days. These days ladies, however rich they may be, have no talk except that of marriage.

Q. If you want to get rid of this evil would you fix the age for marriage or consummation?

A. As I have already said the community to which I belong forms about one-third of the total Hindu population of the Punjab and we have already fixed the age at 16. The same is the case with other communities. I would therefore fix the age at 16.

Q. Do you think that will be acceptable to your community?

A. My community has already accepted it.

Q. Do you think it will be acceptable to other Hindu communities also?

A. I should say so. There may be certain orthodox Brahmins who may object to it.

Q. You don't think there will be any very large dissatisfaction.

A. Once it is passed people will try to act according to it.

Q. Supposing for any reason it is not possible to pass legislation fixing the age of marriage, would you then be in favour of fixing the age of consent?

A. I would advise that.

Q. What would you fix that at?

A. At 14.

Q. If you think that the society will be prepared for fixing the marriage age 16 have you any reason to think that there will be any wide dissatisfaction if the age of consent is fixed at 16?

A. The question is whether the Legislature is going to put that marriage age at 16. If it is, there will be none; but if the legislature is not going to fix the marriage age, then for some time leaving aside the lower middle class early marriages will still go on.

Q. Supposing for any reason it is not possible to fix the marriageable age at all or to fix it as high as 16, would you then advocate the age of consent being fixed at 16?

A. No. I would not at present, because it is very difficult to get any cases to a court of law.

Q. Would there not be the same difficulty if the age of consent is fixed at 14?

A. Then there may be some cases brought to light.

Q. Do you think the fact that the very existence of the law will prove a sort of remedy for the evil?

A. Well in 1925 the age was raised to 13; now it is 1928; go to 14, in another five years you raise it to 15 and then again after some interval you raise it to 16. I would suggest the raising of the age gradually.

Q. But don't you think that there must be a certain amount of fixity and certainty about it? You cannot be meddling with penal legislation every now and then.

A. In the Assembly you can bring amending bills. After a year, say, you can bring in an amending bill. What is the difficulty there? It will have a very beneficial effect. If such committees continue to be appointed say after every 5 years it will keep these things before the public, otherwise nobody knows about the law.

Q. But would it not result in orthodox opposition every time?

A. Orthodox opinion is dying very fast. I don't know, I never care to know and nobody cares to know what the injunction is.

Q. You would not entirely rely on social reform.

A. Not entirely. I would have it supplemented by legislation. It has been my view since 1890.

Q. A witness told us that the practice of infanticide and of abortion among married girls was prevalent in Sheikhpura district. What is your experience?

A. I am closely connected with that district. I have been the vice-president of the District Board. There are no cases of infanticide except perhaps amongst the unmarried girls there may be some lunatics who may do that. I have not heard of any case in these days. I will get my opinion confirmed and send a report to you.

Written Statement, dated the 5th August 1928, of Mr. HAZARA SINGH CHEEMA, B.A., Student, Law College.

1. Yes. There is a good deal of dissatisfaction with the state of law as to the age of consent as contained in Sections 375 and 376 of the Indian Penal Code. But that dissatisfaction is on the negative side. It does not mean that the present said Sections of the Penal Code are harsh or revolting to the feelings of the people. On the contrary the dissatisfaction consists in that the Law contained in those Sections is not severe enough to safeguard the health of the young girls. This dissatisfaction may well be classified under two heads:—

- (1) That existing in cities and towns. The urban population is sufficiently cultured and has the sense to realise that the Law contained in Sections 375 and 376 of the Indian Penal Code is too poor to meet the present contingencies. The girls and especially the school girls in the towns are not well developed at such years as 13 or 14. And unhappily the atmosphere in the cities and towns is full of sham cupids. The consent given by the girl above 14 is a statutory protection to the tiny lover and

this state of affairs is impairing daily the freshness, beauty and above all the physical health of the city girls.

(2) That existing in rural areas.

In this area though the country girls are stronger at the age of 14 than their sisters of the same age in the towns, yet it is greatly resented by the villagers that their girls are unhappily made able to give consent at such young age as that of 14 years.

2. (1) I am not in favour of retaining the law of Age of Consent as it is and wish some amendment in it.

(2) I am strongly in favour of making an advance on the present law. The circumstances which in my opinion justify the said advance are as under:—

Owing to the whole of India being revolutionized in every respect and every sphere of action, the old notions of the Indian people are dying out and modern ideals are taking their place. Thralldom to ancient superstitions is yielding before the modern scientific system. The spread of education among the masses since the reforms of 1919 has awakened a sense of responsibility even among the villagers. They are no longer creatures of old discussing Ramayan and Mahabharat, but they rather seem to show some practical tendencies, by their taking part in some political movements. The womenfolk are also rousing from their *Rip Van Winkle's* sleep. They are becoming more educated and consequently modernized. They are gradually recognizing the havoc wrought upon them by the society which forces upon them early marriage and early consummation of marriage. They are slowly and steadily metamorphosing into gentle ladies of superior intellect and thus are ceasing to be bullies of strength and vigour. Now-a-days at the age of 13 or 14 they are not of the same strength and vigour as they used to be some times back. Modern sense of society and refinement has made them too tender as to give consent to cohabitation at such young age as contained in Sections 375 or 376 at the present time.

3. Crimes of seduction in my part of the country are not so frequent as those of rape. Seduction hardly occurs once or twice in a year or amongst a group of 3 or 4 villages. But rape cases, I am certain, are sufficiently frequent. Every village surely has some 4 or 5 cases every year.

The amendment of the law made in 1925 raising the age of consent to 14 years outside the marital state has succeeded in preventing crimes of seduction and rape only to a negligible degree. Probably the villagers are ignorant of the amendment and they do not know that even there is statutory prohibition to consummate marriage below 13 years. This could easily, though not logically, be inferred from the judgment of the Lahore High Court, delivered by Mr. Justice Addison, in which His Lordship observe "this is the first case of its kind." This referred to a case where a *jat* raped his 10 years old wife.

The only measure to make the law effective to my mind is that the age of consent should be raised to 16 years outside the marital state and to 14 years within the marital state and lastly to declare it publicly by some means or other amongst the villagers after the Law is passed.

4. (1) The amendment of 1925 raising the age of consent to 13 years within marital state has been effective to some extent in protecting married girls against cohabitation by postponing the consummation of marriage. But this protection to the married girls is confined only to the education circles and does not extend to the masses. For the advance in the law has not been such as to make a good deal of difference between the old and the new law.

(2) Again the public opinion has been stimulated to a considerable extent in the educated society while the country people have begun to realize the benefit of the said amendment.

(3) I make bold to say that the amendment of 1925 has had no effect whatsoever so as to put off marriages beyond 13 years. The reason being

that only consummation within 13 years is punishable, under the present law, and not the marriage ceremony below 13 years.

To make the law effective to an appreciable degree the amendment to the age of consent within the marital state must at least be as in the Bill before us. It will not be out of place to remark here that Sarda's Bill if passed would be highly beneficial in postponing marriages beyond 14 years or so.

5. The usual age at which girls in my part of the country attain puberty according to the women whom I consulted 12 years. In majority of cases this is the age of puberty. But in some cases as those of sweepers and Changars of the villages, the girls show some signs of puberty even at the age of 11 or so. These two classes have to work hard and eat more. Especially among the Changars even the young girls do some farm work, such as planting the paddy plants in the jats' fields. This hard labour combined with the heavy food they consume makes them feel the 'passions' very soon.

6. Cohabitation in my part of the country is not common before puberty among any class of people. There are some occasional cases where a girl of a low class is ravished before puberty.

(2) Cohabitation even soon after puberty is not sufficiently common in my part of the country.

(3) Cohabitation before the girl completes 13 years is sufficiently common among the Brahmins as well as such low classes as weavers, sweepers and others. Jat is the only community in which cohabitation with a girl before thirteen is not common.

Very few of such cases come to court. The usual tendency of the people as described below is to hush up the matter. Only the bold ones dare to allow their daughters to go to courts, at least in my part of the country.

7. I do not attribute the practice of early consummation of marriage before or at puberty to any religious injunction. It is only the vicious and stupid desire of some of the women of our country who have a curious yearning that their children should marry and consummate the marriage at an early age.

8. I am afraid I am not aware of such ceremonies, and neither I hope that they are observed in my part of the country.

9. No, I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify the consummation of marriage. The girl is not at all fully developed as to bear the strain of consummation. And supposing the marriage is consummated at the age of puberty which is the age of 12 years, then if at the latest a child is born at the age of 14, God knows how the poor girl would be able to bear the travailment. I think at least 3 years must elapse after the age of puberty before the marriage is consummated. At the age of 15 then consummation of marriage would be less injurious to her own health and that of her progeny. But to be more sympathetic and kind to the girls it is good that the marriage may be consummated at the age of 17, so that there may be no danger whatsoever to the mother and the baby afterwards.

10. This is a very vague query. The conditions are different in different provinces. I living in the centre of the Punjab certainly do know nothing, at what age the girls in Bengal become mature. So presuming the question applies to the local knowledge of our part of the country I venture to say that a girl in the village can give an intelligent consent to cohabitation with due regard to its consequences at the age of 15 or so. While in the towns of the Punjab the same intelligent consent can be given by a girl at the age of 17 or so. The reason being that the village girls of 15 are far stronger than their sisters of the same age in the towns. Moreover the girls in the villages having no such diversion as music and education have nothing else to learn from the elderly married girls of the village except how to get married and live a family life. This coupled with her country strength makes her feel the passion at an earlier stage. The city girls are now-a-days in good many cases busy in going to school or college. She is

slender and weak in health. She is sufficiently intelligent that cohabitation would ruin her health below the age of 17.

11. I have heard of many cases in which cohabitation with girls before their being fully physically developed resulted in some cases in the death of the girls and in others affected prejudicially their health. But one such case happened in my own village and I can fully give its details.

There was a Brahman's girl in our village, who was good looking and of a comparatively strong physique. She was unhappily married by her parents at the age of about 13 years to a Brahman young farmer who was about 27 years old. The *Muklawa* ceremony which really means the time when the girl goes after the marriage to her husband's house to consummate the marriage. After the consummation she became pregnant and woe worth the day when the time for delivery came. Before she actually delivered the child, she was completely wrought with pain. Having brought forth the dead child she became victim to a persistent fever which resulted in her death.

12. Yes, I am sufficiently convinced that early consummation and early maternity is responsible for high maternal and infantile mortality.

In my part of the country it happens in two ways:—

(i) When a young married girl gives birth to a child, she is either immature or weak. Owing to her immaturity it becomes a huge problem for the whole house some time before delivery. The girl makes a hell of the house with cries of agonizing pain even before the actual delivery. When the time for delivery comes, the poor crying creature is attended to by the untrained village nurse with her dirty and uncouth hands drags the child out. The immature and weak nature of the girl is generally incapable of withstanding the excessive pain which is essential at the time of delivery. She either dies herself or the child drawn out turns to be dead. Even if she survives the ordeal, she is too shy of her child at her young age. She does not call her son a son, but *vira* (brother). The consequence is that the child is very poorly attended. If the child born is a daughter, she is cursed owing to a peculiar oriental notion from her birth and in nine out of ten cases she is doomed to die through exposure.

(ii) When the girl either married or unmarried cohabits with a stranger and if unhappily she becomes pregnant, she tries her best to undergo an abortion by ignorant foolish *dais* (nurses). The result is either death of the girl or running her useless for future procreation. These two features go a good deal to mar the intellectual progress of the people of our country. The women especially are the chief victims. Physical development both of the girl and their future progeny is impossible if such crimes as mentioned above are not meted out with sterner laws.

13. Yes, there has been a good deal of development of public opinion in my part of the country in favour of an extension of the age of consent in marital and extra-marital cases. To ratify this point I consulted a sweeper and a Rajput Mussalman of my village. The reply they gave was:—

“Yes, it is good of the Sarkar that is making such laws as to raise the age of consent both in marital and extra-marital cases. Our daughters in these days of deterioration are not so stout as they used to be in olden times. Certainly they need protection. Their health is so weak now-a-days”. “But one thing” they continued, “stands in our way. Our country is too poor. Whenever the people are offered some tipping they fall low. Alas! Our poor girls, they do fall when one offers them a bit of money”.

From the above extract it would be quite clear that even the illiterate are in favour of the extension of the age of consent, though they give this opinion in an hesitating manner.

In my part of the country I am glad to say that this desire for extension of age of consent is sufficiently general.

14. Unhappily, yes! The women in my part of the country are almost cent. per cent. illiterate. Their ideas are those of their forefathers and they are generally in favour of early consummation of marriage. Their children are hardly out of their swaddling clots when the women begin to think of getting them betrothed. If the child is a daughter the mother would say "Ah! The daughters are the very thorns from their birth. So when I shall be relieved of her and see her babies playing in my lap." If the child is a boy his mother is very anxious to get him married before the beard graces his chin. The long and short of the matter is that the women over here are very fond of early marriage and consequently early consummation of marriage.

15. I do not think there have been any material difficulties in determining the age of the girls in connection with offences under Sections 375 and 376 of the Indian Penal Code. There have been some exceptional cases in which a girl raped, though being only of 12 or 13 years, has appeared to be of 15 or 16 years, owing to her good physique and stout nature. She has consequently tried her best to save her paramour from the clutches of the penal law by declaring herself falsely to be of 15 or 16 years.

16. The slightest difficulty if any in determining the correct age of the girl would be removed by raising the age of consent as provided by the present Bill before us. For at that time the girl is sufficiently old and intelligent, at least in my part of the country to look of an approximate age.

17. Yes! I would separate extra-marital and marital offences into different offences for the sake of lucidity. I agree with the amount of punishment provided by Section 376 of the Penal Code and Section 376A of the amending Bill of Sir Hari Singh Gour.

18. I am quite in agreement with the difference which exists between the amount of punishment for marital and extra-marital cases. The only suggestion I would make is that the offence under new Section 376A should be made *non-bailable*. The reason being that when it is the main aim and object of the Legislature to safeguard the health of the young girls and consequently of the coming progeny it seems to be ridiculous not to provide the best possible means to prevent illicit married intercourse as desired by the amending Section 376A. The disadvantages of this offence being bailable are given in the answer to the following question.

19. It is unhappily a common affair that rape cases are generally hushed up. Instinctive aversion of the people—I can well guarantee my own part of the country—especially the Punjabi Jats to disclose their secrets before a court of law is responsible for many evil consequences. If the offender would be brought to book and punished according to law it would serve the purpose of an example among other people. But what happens is just the contrary. If a Jat's daughter is ravished, the Jat is filled with vindictiveness and waits till his turn for revenge comes. He either retaliates the same thing upon any female member of the family of the man who ravished his daughter, or he makes an end of the ravisher with an axe or *Chhavi*. If the daughter of a *Kamin* (menial of the village, i.e., sweepers, weavers, waterman, carpenter and blacksmith, etc.) is raped by a Jat, well! that is, I am afraid to admit an ordinary affair and the poor *Kamin* remains silent. He dares not stir against the Zamindar. At best the relatives of the offending Jat might go to the aggrieved party and entreat for some compromise. This formal prayer to the *Kamin* would be more than he expected, and he would gladly pardon the offender.

(i) In my opinion this sort of collusion will be sufficiently guarded against if some amendment is made in Section 44 (1) of the *Criminal Procedure Code* by making it the statutory obligation of every person whether

within or without the presidency towns to report to the nearest magistrate or police station the commission of the offence under Sections 375 and 376 of the Indian Penal Code.

(ii) The safeguard against collusion in marital cases, to my mind would be provided to a considerable degree if the offence under the new Section 376A of the Bill is made non-bailable. It is quite apparent that if the accused husband is released on bail, he has every opportunity to stifle the prosecution, by mitigating circumstantial evidence.

Improper prosecution in rape cases is if at all, very rare, so far as my part of the country is concerned.

Improper extortion so far as I understand it comes, if the offence of rape is committed within the purview of Sections 375 and 376 and if not other sections of the Penal Code are sufficiently rigorous to punish the offender if he outrages the modesty of a woman.

20. In my opinion fixing a higher age of consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage. This opinion is primarily based on the notion of the masses of our country who are in favour of getting their children married at an early age. The marriage according to the Hindus who are of a prepondering majority in the population of India is a *sanskara* or religious sacrament rather than legalization of procreation of children. There is still some hope if the law penalises the consummation of marriage within such years as 14 or 15, even though the marriages are performed any earlier. What is baneful to the State is cohabitation and procreation of children at an immature age.

The public opinion in my part of the country favours the idea that the penal legislation fixing a higher age of consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage.

21. I would rather rely on the strengthening of the penal law to secure the object in view than on the progress of the social reform by means of education and social propaganda.

There is no doubt that raising the limit of age when the girls in our country are able to give an intelligent consent to cohabitation, is more or less a social and to some extent an economic problem. It is social in the sense that it concerns both the sexes of the Indian community and economic in the sense that it concerns the welfare and secular advantages of this country. Naturally to the advocates of social reform it might appear that such a question may be left to the society. But social reform even in advanced countries is destined to be regrettably slow. In India where the percentage of educated people is very very slow, this is all the more deplorable.

Moreover public opinion is a very poor sanction for deterring criminals. The opinion of the illiterate masses will be absolutely different from that of the cultured ones. It is quite a common experience that whereas in the villages doing anything short of ravishing a poor woman would not matter much with the villagers, in refined circles of society even a slight touch to a lady would be sufficient to initiate criminal proceedings against the wrongdoer.

Another important fact which would go to discard the sanction of public opinion is our oriental manner of hushing up the matter especially when our daughters or sisters are involved in the case, and not to seek a judicial redress.

The spread of education has neither prevented nor shall it hinder the propensity of human being to commit mischief. Satan is present in all of us. Only the mighty power of the State can check its devilish activities. It is to the benefit of the State that its members should be healthy and sinewy to earn more and consequently to pay more to the Treasury of the State.

**Oral Evidence of Mr. HAZARA SINGH CHEEMA, B.A., Student,
Law College, Lahore.**

(Lahore, 20th September 1928.)

Q. Are you connected with any Sikh institution?

A. I am not particularly connected with any, but I am interested in some institutions.

Q. Does your experience go to the villages or is it limited to cities only?

A. I know more about the villages than about the towns because I am myself a villager.

Q. You have said that 14 and 16 ought to be the age of consent for marital and extra-marital cases respectively. Would you have the same age for penalising the marriages?

A. In that case I will have less age, about 13½ for girls and 18 for boys. I am speaking from the village point of view.

Q. But I understand that in villages girls attain puberty much later.

A. Village women generally attain puberty at the age of 12. In towns the age is more. In villages the age is generally 12 because girls have to do much manual work in the fields. They are sufficiently stout and strong.

Q. Do women work in the fields?

A. Yes.

Q. So 12 is the usual age of puberty.

A. Kamin classes attain it even earlier.

Q. Who are the Kamin classes?

A. Those who do not own land in the villages are called Kamin classes. Carpenters, Blacksmiths, etc., are Kamin classes.

Q. And not Jats?

A. They own land.

Q. In answer to Question No. 3 you have said, "rape cases, I am certain, are sufficiently frequent. Every village surely has some 4 or 5 cases every year." Is that of girls between 13 and 16 or is it of elderly women?

A. It is generally the girls between 14 and 16. Generally after 16th year they get married.

Q. In which castes do these cases occur most? Is it the Mohammadans or Jats or what?

A. Jats are to be blamed for this purpose. They do not realise that that is a bad thing and they do commit most of these cases. Jats are more responsible for these.

Q. Do you think that the Jats are a more virile race than the Banias?

A. Yes, they are very strong and hardy. The chief cause is that they are married at a very high age. Among Jats hardly 20 per cent. are married. It is very difficult among the Jats to find a girl for marriage. They can hardly get a bride for three or four thousand rupees.

Q. Some of these cases you say are compromised and hushed up.

A. Certainly. Hardly 10 per cent. come to the court. There are a very large number of cases. Cases do happen but only 10 per cent. are reported and the other 90 per cent. go undetected.

Q. In your answer to Question No. 4, you say, "it will not be out of place to remark here that Sarda's Bill if passed would be highly beneficial in postponing marriages beyond 14 years or so." Do you want to assert that this is a better remedy and you would rather have that than the Age of Consent?

A. The Age of Consent Bill must be passed at all costs, while Sarda's Bill might or might not be passed. Sarda's Bill is secondary.

Q. You say that these cases do not come to court. If that is so what will be the use of raising the age of consent? How will the law of age of consent be more effective if we simply raise the age?

A. In those cases which do come to court it is very difficult to recognise whether a girl is 13 or 14. If the age is raised to 16 it will be much easier. Then it becomes very easy to recognise whether a girl is above 16 or below 16.

Q. Your remedy is only with regard to cases which do come to the court. You have no methods to suggest with regard to cases which do not come to court?

A. The only suggestion that I have to make is that the Lambardar should be asked by the Deputy Commissioner to report the case, or the Sub-Inspector who tours in the villages might be directed to investigate whether there are any rape cases. I think if the Lambardars are directed on that point cases will be brought to light. My experience is that these Lambardars obey the Government more than any other authority.

Q. You talk of Sub-Inspectors, would you like the police to deal with these cases at all?

A. I think it would be much better, because investigation by the police is surely very good.

Q. We are told that police should under no circumstances be allowed to investigate. Do you believe in the police?

A. I do.

Chairman: In answer to Question No. 11 you have given us some instances where girls have suffered. Could you give us any instances of other girls who have suffered either in their own person or in the person of their progeny?

A. I heard of several cases but I cannot say from personal knowledge.

Q. In reply to Question No. 12 you have said 'if the child born is a daughter she is cursed owing to a peculiar oriental notion from her birth and nine out of ten cases she is doomed to die through exposure'. Do you mean to say they are deliberately exposed so that they may die?

A. The tendency on the part of the mother is not to bring her up in the proper manner.

Q. Is it because she is ignorant?

A. No, it is an instinct among the village women that they do not like girls.

Q. Do they allow the girl to die by deliberate neglect?

A. Yes, girls are not cared for. If it were a boy they take good care.

Q. Do you know whether infanticide is prevalent in the villages?

A. I do not think so.

Q. What part of the country you come from?

A. Amritsar District.

Q. In answer to Question No. 13, you have stated that you consulted a Rajput Mussalman and a sweeper and they said that their girls fall if they are offered money. Would you like us to draw the inference that if the girls are kept unmarried till 14, 15 or 16 years there is some likelihood of their becoming immoral?

A. I do not think so, there is very little likelihood up to 16.

Q. If this is a complaint now when the age is 13 would there not be more chances of girls falling if we raise it to 16?

A. I think it is proper to have some protection for them whether they are allured or not. The protection of the law by raising the age will be sufficient.

Q. You have said in answer to Question No. 20, that in your part of the country penal legislation fixing a higher age of consent is likely to be

more effective than legislation fixing the minimum age of marriage. At the same time you have stated that the age of consent is not effective in 90 per cent. cases. On what do you base this opinion that the law of marriage is likely to be less effective than the age of consent?

A. In the villages people have got a notion to marry their daughters early; therefore they do not like to fix the marriage age.

Q. Do you think it will serve our object if early motherhood is to be postponed?

A. I think it will.

Dr. Beadon: In reply to Question No. 11, you have cited the case of a Brahman girl. Could you give us any idea how long ago it happened?

A. About 3 years ago.

Q. Is the practice of child marriage still very common among Banias and Brahmans in the villages?

A. Yes.

Q. What age would be the marriage age of Brahmans?

A. They marry their daughters even at 10.

Q. You have said that girls are neglected. Do you mean to say that they have practically been killed by neglect?

A. Yes.

Q. Do you mean to say that this practice exists all over the Punjab or the area you are acquainted with?

A. I can speak with authority that this exists all over the Punjab.

Mrs. Nehru: In para. 1 what do you mean by saying that the law should be severe enough to safeguard the health of young girls?

A. I mean the age of consent is lower, it should be higher.

Q. You do not mean that the punishment is insufficient?

A. No, it is sufficient.

Q. In answer to Question 12 you say that sterner laws are not meted out. Do you think lowering of the punishment will be better?

A. I think the present punishment is sufficient.

Q. You have just now said that very few cases come to light. Can you tell us any reasons for it?

A. Because they are hushed up.

Q. Why are they hushed up? Is it because Jats are stronger than the other classes?

A. Yes.

Q. I understand that because the offended belongs to the superior class and the offended is dependent on him therefore crimes are not reported?

A. Yes.

Q. You say that there is dissatisfaction with regard to this law among the villagers. Have you ascertained their opinion personally?

A. Yes.

Q. You talked to them and they knew the law?

A. Yes.

Q. And yet you have said in one place that the law relating to intra-marital relations, is not known to villagers?

A. It is not sufficiently known.

Q. Do you think the Sections relating to extra-marital relations are more known than intra-marital?

A. They do not know what is the age of consent.

Q. If the law is known to them will it have more effect?

A. Yes.

Q. Can you suggest any means of making the law known to them?

A. It should be made more public by the Deputy Commissioners and by beat of drums?

Q. Even if it is declared by the beat of drum and if it is not brought into practice, will it not be forgotten soon?

A. It should be done every 2 years.

Q. In Question No. 4 you say that on account of the existence of this law and the amendment of 1925 marriages have been postponed. Have you got a direct knowledge of any marriages being postponed?

A. Yes. I know a man who is a teacher in the Normal School did not marry because the girl was young and he told me that he would have married if the law had not been in existence.

Q. Was that a solitary case or have you come across other cases besides that?

A. That was the only case I know.

Q. In para. 13 you say that there is considerable dissatisfaction with regard to the present law and in para. 14 you say that women generally favour early marriages and early consummation of marriages. Which public opinion you refer to?

A. Men favour an advance but women oppose it.

Q. In the same family?

A. Yes.

Mr. Mudaliar: Question 18. You want to make the marital offences non-bailable. What is your object?

A. If the offence is made non-bailable it will be made a bit more severe. The husband will not try and compromise the case.

Q. But he will have his relations and friends?

A. If it is non-bailable he will have no chance to meddle with the prosecution evidence because he will be in prison.

Q. Cannot you suggest any other means whereby they could be kept apart after the offence has been committed?

A. It will be better to keep him in the lock up.

Q. What age of consent would you fix?

A. 16.

Q. You would leave the marriage to be performed at any age?

A. Consummation is the material point.

Q. The ceremony of muklawa we are told is not prevalent now; is it dying out?

A. No, it is still prevalent.

Q. Is it universal?

A. Yes.

Q. When does it usually take place? Is it done simultaneously with the marriage?

A. When the girl is mature it takes place with the marriage.

Q. Supposing the marriage is celebrated at 12 or 13 and if the muklawa ceremony takes place simultaneously the consummation will take place at 13? Do you think legislation will be sufficient to prevent this?

A. Yes.

Q. Don't you think that that ceremony is of such a private character that it may not possibly be found out?

A. It is a public ceremony.

Q. Would you supplement the law by suggesting that marriage may take place but muklawa should not take place up to a certain age?

A. No.

Q. You said that the right of reporting these cases should be a duty on public under Section 44.

A. Yes.

Q. There are certain very grave offences in which a duty is cast on the public to report these cases immediately to the police. Would you bring this among the category of those cases?

A. Yes.

Q. Supposing the report is incorrect?

A. He must be aware that the report is correct.

Q. Don't you think they would lead to the harassment of people generally? Would you be justified in laying the obligation on the public to report cases like that?

A. All that will be for the protection of the girl.

Q. Apart from your desire to make the law effective, would public opinion support this suggestion?

A. I think those who have in view the protection of the girls must support it.

Q. If the marriage were fixed at 14 all these questions will disappear. Don't you think so?

A. I cannot say. But people are not in favour of marriage legislation.

Q. Is it on account of any religious injunction that people do not want marriage legislation? Do you know of any injunction that they should marry their girls at a certain age?

A. No.

Q. They why are the people against fixing a marriage age?

A. It is due to custom.

Q. You say that the girls are done away with. Do you think it is a deliberate process of killing girls?

A. They do not care for the girl as they do for the boy.

Q. You mean to say that it is due to deep disgust?

A. Yes, it is negligence.

Q. Is that among the Hindus or among any other communities also?

A. I can only speak of Jats with authority.

Q. Is it among the Mohamedan Jats?

A. Yes.

Q. Have you in your mind any definite cases of negligence amounting to killing?

A. Yes, I saw them with my own eyes.

Q. What sort of negligence is associated with it? Do they hate them, or not handle them properly or is it due to economic causes, i.e., parents not being able to afford to give the child milk?

A. It is not due to economic necessity but it is done with the deliberate intention not to allow the child to grow. It is only a custom.

Written Statement, dated the 13th August 1928, of Rai Bahadur Lala SEWAK RAM, M.L.C., President, Punjab Provincial Hindu Sabha, Punjab, Lahore.

In reply to your letter No. 42-A. C. C., dated 18th July 1928, I have consulted some leading members of my Sabha and send you the following reply.

1. Law should be improved.
2. Advance should be made in order to keep pace with the growing reform movement in these days.
3. There are still cases. The amendment must have done some good; the law should be made more stringent to make it more effective.
4. Yes, the important step is No. (3).
5. Fourteen to fifteen years. It differs in various classes, in working classes it is higher.
6. Not in the Punjab, very few cases come to Court.
7. Yes, it was due to religious injunctions. There is Sanskrit saying to this effect "asht versha bhavet gauri", etc. The penalty is for the future life.
8. Yes, it is performed after the attainment of puberty.
9. The attainment of puberty is no such sufficient indication. Some four or five years after.
10. After sixteen.
11. This is for medical men to answer. There are probably several cases.
12. Yes.
13. Opinion is increasing.
14. Not in the Punjab.
15. Yes, difficulties have arisen; birth registers should be carefully kept.
16. Yes.
17. There should be line of distinction. Punishment to be increased to some extent.
19. Police should be warned to take better precautions and better men should be enlisted.
20. Legislation fixing the minimum age of marriage is better.
21. It is better to rely on the progress of social reform, by means of education and social propaganda.

**Oral Evidence of Rai Bahadur Lala SEWAK RAM, M.L.C., President,
Punjab Provincial Hindu Sabha, Lahore.**

(Lahore, 20th September 1928.)

Chairman: Are you the President of the Punjab Provincial Hindu Sabha?

A. Yes.

Q. What is the membership of your Sabha?

A. The membership is very limited because we get only one or two representatives from each district. Generally the Working Committee does all the work.

Q. Will the evidence you are giving be the representative opinion of your Sabha or your personal opinion?

A. We did not actually discuss the matter in the Sabha, but my opinion will be rarely representative.

Q. Has there been any dissatisfaction with the present age of consent at 13?

A. Yes.

Q. In what way?

A. That the age is low.

Q. Do you think that the age of marriage has gone up during the last 4 or 5 years and that it is still going up?

A. It is so in the Punjab.

Q. Is this so amongst all classes and communities, in the villages and towns or is it confined to any particular locality or community?

A. In the Punjab the age was low in the upper classes. In the working classes and the rural classes it was not so low. It was only in the cities and especially amongst the upper classes that the age was low. But conditions have improved since the last 5 or 10 years.

Q. Do you think that fixing the age of consent at 13 in 1925 had anything to do with the rising of the marriage age?

A. No; it is purely due to general education.

Q. In answer to Question 3 you say that there are still cases of rape and seduction. Do you think it would be lessened if we raise the age of consent?

A. Yes, I would like to raise it higher, but I have consulted my friends and we are agreed that 14 would be enough for the present.

Q. Are you probably aware that Dr. Gour proposes 14?

A. Yes.

Q. And would you propose a higher age for outside marital relations?

A. Yes, I would suggest 16.

Q. Do you think that raising the age to 16 would protect girls outside marital relations?

A. Yes, I think so.

Q. Can you tell us why you have put the age of consent within marital relations at 14?

A. I consulted public opinion and they told me that as a first stage and as a compromise we can have 14, with a view eventually to making it higher.

Q. Would you prefer legislation fixing the age of marriage rather than legislation fixing the age of consent?

A. Yes, I think it is much better to have the age of marriage at 14. It would prevent a lot of trouble.

Q. We have been told that fixing an age for marriage would not be safe or desirable and that it would cause dissatisfaction if we prevent marriages before a certain age. Instead, it has been suggested to us that mukhlawa may be penalised but not marriages. Do you think it is possible?

A. Mukhlawa was considered a very important ceremony in old days, but now it is more or less out of date. Now-a-days it takes place along with the marriages and is only an empty form whereas in old days it was considered a sacred ceremony.

Q. Do you think that this law of the age of consent has been generally known amongst the people?

A. No.

Q. If methods were taken to make it better known, would it be followed by people or would it be a dead letter?

A. It would be the same as it was before. My submission is that if you fixed a marriage age that will be much better. But if nothing else is going to be done, the age of consent may be fixed at 14.

Q. At what age do girls attain puberty in the towns and villages?

A. 14 in towns and 16 in villages.

Q. Question 11: Have you known of any cases in which infant mothers have suffered in their own person or with regard to their children?

A. I have known of several cases. They have suffered in their own health and in that of their children. I married my daughter at 13 and by 16 she had three children. She is dead; 2 children are dead, and only one child remains.

Q. Was she well-developed at 13?

A. Yes, but early marriage killed her; her health was absolutely sapped. She first became weak, then became consumptive and died.

Q. Do you know of some other cases?

A. Yes; I have been working in villages and other places, and I have come across several cases in which girl mothers of 13 and 14 die.

Q. Do the women in your part of the country favour early consummation of marriage?

A. No; not in the Punjab.

Q. Are you a lawyer?

A. Yes; I have been a judge.

Q. Have you had any difficulties with regard to the ascertainment of the age of girls?

A. Yes; great difficulty has been experienced in regard to the age. There is no marriage register properly kept. Sometimes they report the births, but even in the Civil Surgeon's Office we could not trace the particular age. The identity of the girl is difficult.

Q. Would you suggest any means out of this difficulty?

A. In olden days there was the custom of Janam Patri. This can be partly solved if that practice is revived.

Q. But we cannot compel people to have it.

A. Some arrangement must be done by which the parents must be compelled to keep a birth certificate.

Q. Would you make it penal and would you make the parents report the name of the child as soon as it is given?

A. Yes; it is the duty of the officer concerned to get the name of the child entered on the register. At the same time the parents should be compelled to have in their possession a certificate of the birth; otherwise we have to spend days and days sometimes to get from the files the age of a particular girl and a case cannot proceed unless the age of the girl is obtained.

Q. Will the difficulty be solved by raising the age to 14 or even 16?

A. Yes, it will be solved by raising the age to 14. I would not go just at present to 16 because I have to consider the orthodox community.

Q. Would you make any difference in the categories of the two offences, intra-marital and extra-marital and would you separate them? Should there be a line of distinction as Dr. Gour has suggested?

A. Dr. Gour has made punishment too low. I would make a difference with regard to punishment.

Q. But it has been suggested that by punishing a husband and especially giving him a condign punishment you spoil the life of the girl and therefore the present punishment is sufficient. What is your opinion?

A. He has spoilt the life of the girl and he must be punished for it. I want to add that instead of imprisonment whipping should also be given in the case of such offences. I have removed many a criminal from his habit by whipping. A few exemplary punishments like this will put a stop to offences of the kind. Fine is no punishment.

Mrs. Nehru: As regards whipping do you realise that cases like that may come from respectable families?

A. If a person is so low as to commit this sort of offence, he should be punished. I will, however, leave it to the discretion of the Magistrate.

Q. At present in the civilised world are not whipping and such other corporal punishments looked down upon?

A. But I leave it to the discretion of the Magistrate. I do not say that a person should compulsorily be whipped.

Q. You say that the law must be made more stringent to make it more effective. What do you mean by that?

A. I was only thinking of whipping when I said that it must be made more stringent. The words "or with fine" may be removed altogether.

Q. Perhaps one of the elements for the law being ineffective is that the present punishment is so heavy that respectable people would rather shield the offenders than bring upon them severe punishment. Do you not think so?

A. Whatever the punishment may be there will always be people who will get off by some means or other with the help of the police sometimes.

Q. But marital cases are non-cognisable.

A. I mean that even before the cases are made everything is settled between the criminals and the people who are authorised to make the cases.

Q. What is the reason?

A. Because people do not want that any one should be punished. In all offences it is just the same.

Q. In the few cases that have come to light and have been taken to courts have you come across any cases in which the full punishment has been awarded?

A. No; I have never come across such cases.

Q. Then why do you suggest that punishment should be enhanced when even the maximum punishment in the present law has not been awarded?

A. I am only suggesting a frightful form of punishment, namely, whipping.

Q. In para. 19 you say that the police should be warned to take precautions and better men should be enlisted. What do you mean?

A. I mean that a better class of police officers should be appointed to investigate such cases and in cases where the parties are Hindus Hindu police officers should investigate and in the case of Muhammadans Muhammadan police officers should investigate. Otherwise I smell some trouble.

Q. But intra-marital cases are non-cognisable. To whom would you give the authority to make a complaint?

A. Generally the guardians of the girl should be made responsible.

Q. Would you give the authority to complain to anybody else besides the guardians and parents?

A. Society can take it up.

Q. Do you think it will be backed by public opinion?

A. I think so.

Mr. A. Ramaswami Mudaliyar: Is this Provincial Hindu Sabha of which you are President a branch of the All-India Hindu Maha Sabha?

A. It is affiliated to the All-India Hindu Maha Sabha.

Q. Does it contain orthodox people?

A. Yes, it contains both Sanatanists and Arya Samajists who are both orthodox people.

Q. Do you think then that orthodox opinion is fairly represented in your Sabha to safeguard Hindu interests? Is the point of view of your Sabha in these matters the same as that of the All-India Hindu Maha Sabha?

A. It is affiliated to the All-India Hindu Maha Sabha and its opinion is fairly representative of the latter body.

Q. Are your opinions then to a certain extent the opinions of the orthodox section also?

A. Yes.

Q. May I take it that the orthodox section in your Sabha has not suggested, that it is not in accord with the opinions you have given in regard to the age?

A. In the Punjab the orthodox section is not such as is the case in other provinces. They agree to 14.

Q. You have suggested an increase of the punishment to five years. Is it as a result of your experience of the present punishment of 2 years being found inadequate?

A. The two years suggested by Dr. Gour I find inadequate.

Q. Is 5 years sufficiently deterrent to scare away people?

A. Yes, I think so.

Oral Evidence of Sardar MANGAL SINGH, Member, Shiromani Gurdwara Prabandhak Committee.

(Lahore, 20th September, 1928.)

Chairman: I understand you belong to the Shiromani Gurdwara Prabandhak Committee?

A. I was President of the Shiromani Gurdwara Prabandhak Committee about 2 years when it was an unlawful body. At present I am a member of the Executive Committee of the Prabandhak Committee.

Q. Who is the President?

A. Sardar Kharak Singh.

Q. Have you gone through the questionnaire?

A. Yes. I can answer as a layman. My experience is limited to the Districts of Ludhiana, Ferozepore and Lyallpur—especially the rural portion.

Q. Is the system of early marriages much in vogue in the rural areas as compared with the towns?

A. There used to be child marriages but during the last 15 years they have considerably decreased.

Q. Amongst what classes?

A. I know of Sikh Jats.

Q. Do you know anything about Brahmans and Baniyas?

A. Among the Brahmans the progress towards late marriage is not so great. Among the Sikhs it is due to religious and social causes and owing to the fact that Brahmanical power is decreasing and that is the chief reason.

Q. Would you be able to say that there exists in the villages a certain proportion of child marriages even now?

A. Yes.

Q. What percentage would you put it at?

A. It is difficult to say exactly but among Sikh Jats I will put it at 15 per cent. But there is another fact to be taken into consideration that is the ceremony of muklawa takes place later after 1, 3, 5 or 7 years. But this muklawa ceremony is now decreasing.

Q. What do you think is the age when girls usually attain puberty in the villages?

A. It is higher than in the towns and I think it is 14 or 15 among the Jats.

Q. Even if marriage takes place before 15 do you think generally that muklawa ceremony protects girls until they have completed their 15 or 16 years?

A. Yes, generally it is the case but among the educated classes muklawa is disappearing.

Q. But at the same time the age for marriage is increasing so that muklawa may not be necessary?

A. Yes.

Q. Are you in favour of any legislation fixing the age of consent or are you in favour of laying down an age limit for marriages?

A. There are two aspects of the question. As regards the age of consent we will have to complete the technicality of the law but so far as the practical side is concerned nobody cares about it or in fact nobody knows it.

Q. Then do you mean to say that so far as the age of consent is concerned very few people know it and still fewer follow it?

A. I would not say few people follow it but the fact is that breaches are not reported.

Q. Have you an idea as to how many people abide by the law?

A. I do not think they are even aware of the law. Breaches such as there are are not reported.

Q. If only the age of consent is fixed are there any means of making the law more effective?

A. If we fix the age of marriage that would be more effective. The age of consent will not materially affect the situation.

Q. What would you put the marriage age of a girl?

A. I would not go below 14 but I would prefer 16 in the case of marital relations. In the case of extra-marital relations I would not go below 16.

Q. Do you think that that is the age at which girls generally can realise the consequences of their acts and can give an intelligent consent?

A. It is difficult to say whether girls know the consequences but they are intelligent enough to give a consent.

Q. Do you think if a law is made preventing marriages till a certain age, will it cause dissatisfaction in the villages?

A. So far as the Sikhs are concerned they will welcome it. They would rather have a law penalising marriages below a certain age. Shiromani Akali Dal and Shiromani Prabandhak Committee have passed resolutions in favour of Sarda's Bill.

Q. Instead of penalising marriages if we penalise gaona or muklawa, do you think it will have any effect?

A. Muklawa is not a universal ceremony. It is only restricted to certain high classes and even among them it is disappearing. I would rather fix the marriage age.

Q. Among your Hindu friends or people who have early marriages and early consummation of marriages do you know personally of any cases of ill health of the mother or of the child?

A. For the last 5 years I have living in Amritsar. I know of several of young mothers.

Q. Whether the mother has suffered or the child has suffered or both?

A. I know of several cases where the health of boys and girls has suffered on account of early marriage.

Q. Would you then prescribe an age for boys?

A. Yes, I will prescribe 18 as the least but I would prefer 20.

Q. Have you ever had anything to do with legal questions?

A. No.

Q. Had you any occasion to know the opinion of women amongst those classes of people among whom child marriages exist?

A. Women generally prefer child marriages; they are anxious to see their children married early.

Q. If we raise the age of consent or fix the age of marriage at 18 for boys and 14 for girls, do you think there are any risks of the girls going wrong or running away?

A. If we fixed the age of marriage of girls at 14 I do not think so.

Q. If it is made 16, would there be danger?

A. In the cities there might be but not in the villages.

Dr. Beadon: Is it a fact that in Amritsar child marriages are on the increase?

A. It is more than in the villages.

Q. You have mentioned several cases in which there has been injury to the mother. Can you give us the details?

A. I have known only cases in which there was general ill health due to early marriages and early motherhood.

Q. What sort of ill health?

A. The mother became very weak after the birth of the child and the child was a weakling.

Q. Has there been any special disease?

A. I cannot say that.

Q. Have you seen a dozen cases like that?

A. I have seen 5 or 6 in the last 5 years.

Q. What were the ages of those girls?

A. One was 14 and the others also were somewhere between 13 and 14.

Q. Have you seen any of the children growing up?

A. In one case one child died after three months. The other children were weaklings.

Mrs. Nehru: You have said that child marriages are decreasing in the villages during the last 15 years. Can you tell us whether the speed has been faster during the last few years?

A. Yes, on account of the spread of education.

Q. Then, has this law of the age of consent nothing to do with it?

A. Absolutely nothing. As a matter of fact I studied the Age of Consent Act only this morning.

Q. Considering the fact that the age of marriage is already rising in the Punjab, do you think that there is an urgent need for the fixing of a marriage age?

A. Yes, it is needed, because early marriage should be abolished immediately.

Q. Do you think it will be abolished by legislation?

A. Yes, if you prescribe punishment.

Q. Supposing marriage legislation is not possible, do you think that legislation fixing a higher age of consent will serve the purpose?

A. No, not in intra-marital cases. It will have some effect in extra-marital cases.

Q. Why?

A. People do not know it, and in case they know it, they do not care for it.

A. When a certain action is penalised, what is the reason that people do not care for it?

A. The age of consent does not affect the practical life of the people.

Q. Supposing it is made public and everybody knows about it, do you think people will care for it then?

A. I do not think anybody would like that domestic affairs should be reported in the courts. Discovery of that kind is not usually relished. Even if there are cases in which the parents do not approve of the offence, they would rather kill the girl than go to the court because of their honour.

Q. Supposing the case is not made public and is tried in camera and the press is not admitted, would it make any difference?

A. No, even then people will not go to court.

Mr. Mudaliyar: Do you think that the raising of the age of consent would have a deterrent effect upon people? Would not people like to avoid coming under the clutches of the law?

A. So far as I know that population for which I am speaking, this law of the age of consent will have no effect.

Q. The age was raised to 13 only in 1925. The period that has elapsed is short and we cannot generalise. Moreover the difference between 12 and 13 is not very great and is very difficult to detect. Supposing we raise the age to 15, do you still think that the knowledge of the law would really be not carried to the people and they would not mind it?

A. I think they are more or less indifferent to this law.

Q. Do you think that marriage legislation fixing the age at 14 would be as acceptable to the Hindus as to the Sikhs?

A. The Sikhs will welcome it; the educated section of the Hindus will also welcome it, but the orthodox section of Hindus may object to it.

Q. Do you think a very large section would object?

A. No; even if there is some objection, I would not care.

Q. As a fact you do not think that a large section of Hindus would object to the fixing of the age at 14?

A. No; not in the Punjab.

Q. What is the reason for early marriage being common in Amritsar?

A. One reason is that girls in the city mature earlier. I have seen many young mothers in Amritsar.

Q. Is there a large Sikh population in Amritsar?

A. No, it is about 1/4th of the total population. But the customs of the Sikhs who live in the cities are similar to those of the Hindus.

Q. Is early marriage common among the Sikhs?

A. It is more common in the Sikhs who live in the city than those who live in the villages.

Q. Have you any knowledge of Muhammadan public opinion in the matter?

A. No. I have not discussed the matter with them.

Q. If by any reason the Age of Marriage Act is not passed, would you then advocate the age of consent?

A. The age of consent does not materially affect intra-marital cases but only the extra-marital cases. I would raise the age of consent in extra-marital cases, but I am indifferent to the age being raised in intra-marital cases. The latter will only be a legal technicality and will not be effective in practice.

Oral Evidence of the Hon'ble Mr. Justice AGA HYDER, Puisne Judge of the Punjab High Court, Lahore.

(Lahore, the 20th September, 1928.)

Chairman: How long have you been a judge here?

A. For 2 years.

Q. Before that?

A. I was practising at the bar at Allahabad for 18 years and previous to that for 4 years in the districts. Altogether I have had 22 years' practice.

Q. Do you know the circumstances affecting Hindu life also or Muhammadan only?

A. I have got friends among both the communities and I know the conditions of life amongst both the communities.

Q. Would you make any difference between the age of marriage in towns and in the villages?

A. I do not think there is any real valid difference between the conditions in the villages and the towns. But I may say this that a girl in the country leads a healthy life and as a result they attain maturity a little earlier than the girls in towns.

Q. Do you think that there is a large class amongst the Hindus where child marriages are performed say below the age of 14?

A. About the Kashmiris I know very well. Their girls are married late and their boys are married when they are quite grown up. Therefore child marriage does not take place amongst the Kashmiris. Even amongst the Muhammadans things have now very much improved, and the girls are married at a much more advanced age than was the case 25 years ago.

Q. What would be the age among Muhammadans now?

A. I know only about the conditions in U. P. because I have spent most of my time there. There except among the lower classes marriages take place at a fairly late age. Amongst the lower classes, however, the marriages take place early, but the consummation takes place years afterwards.

Q. Is the lower class a large class?

A. It is difficult to say. I think it is a fairly large class. These are mostly people who were low class Hindus at one time and embraced Muhammadanism many years ago. Even amongst them the consummation takes place after the girls attain majority. Amongst the educated sections of the community however I have not heard of marriages before 16 in recent years.

Q. What about the Hindus?

A. Amongst the lower classes of the Hindus there is a good deal of child marriage. But I do not think that even there a girl is sent to the husband to assume her marital duties before the attainment of maturity. I am speaking of U. P.

Q. Do you think that if we legislate and penalise marriages below a certain age it would cause dissatisfaction? Supposing we enact something like Sarda's Bill and penalise the parents, guardians, etc.?

A. Yes, if some penalty is prescribed I think it will be very good.

Q. Do you not think that there would be serious dissatisfaction?

A. Amongst the educated classes there will not be. But I do not see why even the others should raise any objection. In the classical books of the Hindus—I have not read the originals but only translations—the approved form of marriage is to be the result of a love affair. And one cannot conceive of love affairs unless the parties are grown-up people and there is a *sex urge*. So I cannot understand why educated Hindus should raise any objection. It is not against their religion.

Q. Do you know of any cases in which early consummation and early maternity resulted in injury to the girls or to their children?

A. I know that the health of the girl invariably suffers, but I have not heard of ill-consequences. But the child in such cases is bound to be weak. One need not be a scientist to know that.

Q. There are certain people who dispute that fact.

A. There is no dispute about that. The children of immature parents are bound to be weak.

Q. What is your experience as regards the age of consent, as it is now at 13, being effective?

A. This legislation was introduced only so recently that I cannot say I have seen the actual working of it.

Q. Up to 1925 had the law of consent ever been effective?

A. The trouble is that in these cases the real parties concerned, for various reasons, are reticent and no one outside the married couple knows anything about it. Even if anybody comes to know about it, it is hushed up.

Q. Do you not think that the mothers are likely to go to the court?

A. No, not unless it is a flagrant case, hæmorrhage or injury to the child. Otherwise these cases are hushed up.

Q. Do you think that if we raise the age of consent from 13 onwards—Dr. Gour suggests 14 inside marital cases and 16 outside—it would be effective?

A. I would not be satisfied with anything under 16 in both cases. It is an insensible distinction. We are concerned with the well-being of the girl in her future married life, and also with the future generation. I would make no distinction and would make it 16 all along the line.

Q. Would you have a law for marriages or for the age of consent or both?

A. It is easy enough to enact a law fixing the age of consent but difficult to administer. You cannot enforce the penal provisions for the violation of the law. I would be the last person in the world to allow the police to have anything to do in the matter.

Q. Would you be in favour of fixing an age for marriage the penalty for breaking the law being generally a fine?

A. The punishment should be simple imprisonment or fine at the discretion of the Magistrate according to the nature of the case.

Q. Of these two kinds of legislation which would you prefer?

A. I would have both kinds of legislation.

Q. Would you make the one primary and the other secondary?

A. The two are different. The one comes under criminal administration of justice and the other is civil.

Q. Would you put the ages on a par in both the cases?

A. Yes, 16 in both cases. But personally outside marital cases I would make it 18 because in the case of a girl just over 16 her judgment is not mature. I know from my experience that young girls have been enticed away in several cases and I would therefore give them protection till they are 18.

Chairman: There is an opinion expressed that we should leave this to the good sense of the people, to propaganda and social reform work and that we should not legislate at all in matters like this. What is your idea?

A. Well, if there is legislation it would not interfere with social reform or propaganda work. If social reform work will achieve the object, so much the better. But I think the reformer's work should be supplemented by legislation. Behind the propaganda there should be some sanction.

Q. Do you think Mohammadans will accept this legislation?

A. My opinion is that the majority of the people would take it and support it. So far as the lower classes of the Mohammadans are concerned, it is a very curious thing that they would always like to follow the lead of the educated people and men of position. Whatever they do they would imitate it, and I think the educated and progressive people would welcome this legislation and there is no doubt whatsoever that their lead will be followed by the masses too.

Mrs. Nehru: You said serious cases will come to court. Supposing a serious case happens in a respectable family, do you think it will be brought to the court?

A. I doubt it very much. Better classes would be very reluctant indeed to bring the case to a court of law.

Q. Can you tell us some means by which the law can be made effective?

A. It is a question more or less of evidence and the agency which is going to start the prosecution.

Q. Which, do you think, should be the agency? You have already said that the police should not be the agency for that purpose.

A. I think the District Judge who, under the Guardians and Wards Act is regarded a sort of guardian of the minors, should be constituted an authority for the purpose. These prosecutions should always receive the

previous sanction of some responsible official and he should be the District Judge or as it happens in the case of Guardians and Wards Act he should be the Senior Subordinate Judge to whom these powers are delegated by the Local Government. It would be much better if he is the Senior Subordinate Judge because he is generally either a Hindu or a Mohammadan and he would be able to handle this delicate question with greater delicacy and tact.

Q. But the Magistrate cannot move in the matter unless somebody complains to him. To whom should the right of complaint be given?

A. To the guardians or any private individual provided he obtains the sanction of the District Judge or the Senior Subordinate Judge. If the authority considers this application to be frivolous and vexatious and that there is no foundation some fine may be imposed.

Q. Do you think if this right is given to recognised social reform organizations wherever they exist it will work?

A. I have some experience of these societies. A good deal will depend upon their personnel. Suppose, for instance, there is a society in which Pandit Malviya is interested I will have no hesitation in giving the power to that association.

Q. I shall give the power only to recognised associations.

A. But how can you embody that in the act?

Q. Why not? It can be easily done. It can be made a condition precedent that only those societies will be given this power which are recognised by Municipal Boards or District Boards.

A. You mean to say that some respectable men in the town who have the confidence of the public should be constituted into a society and recognised by the municipality and they should be invested with the power of making a complaint and after the complaint has been made the trial may start and you would not like to have the previous sanction.

Q. It won't be necessary in each case.

A. Your idea is that if there is a society which has got the confidence of the public in the particular locality this step of previous sanction is not necessary. That society can initiate proceedings straight off.

Q. Yes.

A. It is very difficult to generalise in matters like these. Societies vary and the municipalities vary too. That is the whole trouble. There are societies that are really good.

Q. Supposing a case is proved to be false or that the prosecution was started with a malicious purpose the society can be fined. The same punishment which is given to an individual can be given to the society. Don't you think that will be preventive enough?

A. I know some of these societies. They are doing very good work, honest work and doing their work in an unobtrusive way. On the other hand there are people who play on the simplicity of the masses.

Q. But such people can never have the confidence of the people?

A. These people get relied upon by a few roughs.

Q. Supposing a society complains against a certain man, it does not gain anything thereby. All the members of the society cannot have enmity against that particular individual.

A. But then you will have to frame rules for voting, etc.

Q. When once the principle is accepted details can easily be settled.

A. Well, I think there are less of such societies to-day. Mostly they are frauds. They are living on the ignorant masses.

Q. My fear is that if the right of complaint is given to the parents or guardians it will never materialise.

A. According to what I have submitted I have not excluded these societies. They will have perfect liberty. Even if you don't make any provision

for them, they can go to the district judge and lodge a complaint. There is nothing to prevent them from initiating the proceedings. I only want that they should get the previous sanction of the district judge before starting the criminal prosecution as a safeguard against molesting anybody.

Q. What punishment, do you think, should be given in case of breach of this law in marital cases?

A. I should give at least 12 months. Nothing less than that.

Q. Will it not be a very deterrent factor in bringing these cases to light? Won't you like to reduce it to a fine only?

A. I will give an alternative, either fine or imprisonment or both.

Chairman: If we enact a law penalising marriages below a certain age, will it conflict with any Quoranic injunctions?

A. In matters relating to marriages, etc., Mohammadan religion and Mohammadan law is the same. Mohammadan law is very much against "robania" which means celibate life, but on the other hand there is no injunction laid down for males or females to marry at a particular age. They have prescribed certain ages at which they can enter into marriages but primarily it is a question of puberty. Once puberty is attained Mohammadans can enter into marriage.

Q. At what age puberty is generally attained?

A. I suggest the age of marriage as 16 and the age of puberty 15 or 16, so it does not conflict. In Mohammadans generally the age of puberty is supposed to start as a matter of fact from 9 years but this applies only to Arabia where the physical conditions of men and women are entirely different. I find that the age of puberty in the case of girls has been put down variously by the text writers between 13 and 15. The weight of authority is in favour of the view that such questions should be decided on evidence. You cannot lay down any hard and fast rules. One may attain it at 14 and another at 15 or 16. In any case it must be decided according to the facts in each case. So the fixing of age will not conflict but on the contrary Mohammadan law gives legislative sanction to the utmost which has been laid down.

Mr. Mudaliyar: There has been some difficulty in finding out the age of girls. Can you suggest anything to minimise the difficulty?

A. The Hon'ble the Chief Justice asked me to write a short note as it was my turn. I will send you a copy of that note.

Now that this question of age limit is assuming a very serious aspect either for marriage or consent you will have to introduce an agency for registering birth and deaths. It must be just as efficient as it is in England. The existing chowkidar's registers are quite useless which you can get altered at any time.

Q. What agency you would suggest?

A. In every town and village birth and death registers should be maintained. I have suggested in my note that an agency in order to register the births and deaths of children should be more efficient because otherwise it would be left to the conflicting evidence and it is a very serious matter.

Q. You are aware that the name of the child is not entered in the birth register at the time the birth entry is made?

A. Yes; all these registers are prepared in the most careless manner.

Q. Would you suggest that the name of the child should be supplemented by a later report?

A. Yes, the name of the child should be mentioned and also the name of the parents should be entered. In cases of polygamy or widow marriages the name of the mother and other particulars should be mentioned because if a woman was the wife of A but now she is the wife of B you may not be able to find out unless you have a sort of register which gives all these details.

Q. Would you favour the registration of marriages?

A. For enforcing the provision of this part of the enactment you do not require any registration of marriages although personally I would like very much indeed because we are confronted with cases every day from Moham-madans re the restitution of conjugal rights I would personally like to have a very efficient department to register marriages, but my objection is that this question of registration of marriages does not directly arise. If we have a birth register all the necessary particulars will be given and it will be quite sufficient.

Q. This will be an additional check?

A. I doubt very much if the Government will constitute a separate department for this.

Mrs. Nehru: Which agency would you like to keep the birth registers? Should we have a new agency or the same staff should continue?

A. I think there is a sub-registrar in every place and he can keep the registers. He is not a very hard-worked individual except in the case of big stations where there is a lot of commercial transaction but in those cases there are two or three sub-registrars. In the towns the sub-registrar should be responsible and he should be invested with these powers.

Q. Would that involve any extra expenditure?

A. No, he will only require stationery.

Q. Can the same man keep marriage registers if we start the registration of marriages?

A. Yes, it will be good if marriage registers are maintained. It will cut down a good deal of frivolous litigation but my submission is that the question of the maintenance of marriage register does not directly arise out of the present question. !

Mr. Mudaliyar: You have said that 18 should be the age in extra-marital cases. Would that not be a greater hardship for the boy?

A. Boys are convicted of rape even now.

Q. If the boy is below 18 and the girl is above 18 there may be cases of solicitation from the girl but yet the boy will be punished?

A. I have so far never come across a case of a boy who may have raped a girl older than himself. This Committee I understand is dealing with the age of the girls and you are not concerned with the age of boys except in a general way where a man commits an offence.

Q. But in fixing the age we have to consider how the law will affect?

A. In England there was a law at one time that a boy up to a certain could not commit rape but I do not think that law exists now.

Q. You would leave it to the discretion of the magistrate so far as punishment of such cases is concerned?

A. Yes, there are other sections of the law under which action can be taken against him.

Copy of an opinion dated the 16th of April, 1928. recorded by the Hon'ble Mr. Justice Syed Agha Haidar on the Children's Protection Bill by Sir Hari Singh Gour.

I have no doubt that the proposed legislation is a step in the right direction, and I trust that the Act would soon be placed on the Statute book.

In these days when the best brains among the public men of India are making honest efforts to eradicate old evils and to introduce reforms, which are calculated to improve the physical and moral conditions of the Indian society, I do not think that any one would have the courage to oppose the Bill. No doubt in some backward communities attempts would be made to circumvent the provisions of the Bill. There is also the further danger of youthful husbands being exposed to the risks of unsavoury prosecutions, especially in cases which are on the border line of the age limit prescribed by the Bill. In this connection some system of compulsory registration

of births will have to be introduced, so that the question of the age of the girl may be determined with reference to the public records and not merely by the oral testimony of a doubtful character.

So far as non-marital cohabitation is concerned, I do not think that there would be any particular difficulty in administering the proposed law. Such cases, like those under the present law, would be comparatively few and far between. But the difficulty would arise in the case of marital connections contrary to the proposed law, as it is calculated to affect the peace and tranquillity of families all over the country. That, however, is a delicate matter which would require a careful handling; but, so far as the proposed legislation is concerned, I am in favour of it.

Oral Evidence of Kumari B. V. KOLI, Lahore.

(Lahore, 21st September 1928.)

(Vernacular.)

Q. When do marriages take place amongst hillmen?

A. There is an evil custom of Dohri prevalent especially amongst the hills men. It is prevalent amongst the Rajputs also. Dohri means exchange. If there is a girl in one family and a boy in another they are married on the condition that another pair, the bride and the bridegroom being in opposite families, is also married. Under this arrangement sometimes marriages of infants are celebrated. Age is no consideration.

Q. What would you fix the age for girls?

A. 16.

Q. And the age of consent?

A. Also 16.

Q. Would you like that instead of marriages below a particular age being penalised the Goana ceremony may be regulated?

A. I am in favour of Goana being regulated.

Q. Is that your opinion or have you discussed with other ladies also?

A. I have discussed it among my own circle.

Q. What age would you recommend for Goana?

A. 16.

Q. But there are places in which there is no Goana.

A. There we should have marriage legislation.

Q. Would you suggest any improvement in the method of registration of births?

A. At the time of registration of birth an enquiry should be made whether this is the first child or the second child. The age of the mother should also be given.

Dr. Beadon: Do you know of any cases where a girl or the child has suffered on account of early marriage or early consummation?

A. I know of a case where the legs of the girl were distorted the age of the girl was 12 years. The doctor said that the reason was early marriage. I know of other cases where on account of early motherhood the children and the mother have both suffered. I know of a case where the mother was so young that while sleeping she forgot all about her child and inadvertently overlaid it and the child died under her weight.

Q. Is the number of such cases very great?

A. In the villages it is common. In the cities also the evil exists.

Q. We have been told that among the Jats this evil is not prevalent?

A. Among the Rājputs this evil of early marriage is present. I have been living in Jammu for the last 14 years. We have got Kangra servants who tell us these things. Among the hill people the practice of early marriage is very common.

Q. How many cases have you noticed of the children being crushed to death under the weight of the mother?

A. One or two.

Q. Is the labour difficult in the case of young mothers?

A. At the time of birth there is no particular difficulty.

Q. Are mothers also affected by early marriage?

A. Yes. Three or four years after marriage the girls become defective.

Q. How many cases have you noticed?

A. I cannot give the number.

Q. What is the condition of the child at the time of birth?

A. At that time the child is not weak. But the mother cannot take care and that is why the child suffers.

Mrs. Nehru: Are women generally aware that there is any law regulating the age of consent?

A. No. They don't know about it.

Q. It has been said that the law fixing the age at 13 has not been effective. If we raise the age to 16 according to your suggestion, how will that be effective?

A. Meetings must be held. Propaganda work must be carried on. The law must be made known by the beat of the drum. There must be female police.

Q. Would you give the right of complaint to women's organizations?

A. Yes. It may not be possible to get suitable women for the police. The associations must therefore be tried.

Q. Is public opinion growing against early marriage?

A. Yes. The women have begun to realise the consequences. The evil however, still exists. I have seen a girl of 4 years being married.

Q. Do you think the mere fact of publicity being given to the existence of the law will make it effective?

A. It has been effective in Kashmir.

Written Statement, dated Dharmasala, the 15th August 1928, of Mr. M. N. KAESTHA, Bar.-at-Law, Vice-Chairman, District Board, Kangra.

1. No dissatisfaction with the state of law as to the age of consent as contained in sections 375 and 376 of the Indian Penal Code.

2. (i) No.

(ii) With advance of education people do not like to marry their daughters at an early age.

Girls in this district are generally being married about sixteen years of age except in low classes.

3. No cases of seduction and very few cases of rape. The amendment of 1925 has made no difference by raising the age of consent.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years has no effect in this district because the trend of the time is not to marry the girl under sixteen years of age.

(1) to (3) No question of postponing the consummation of marriage arises, the public opinion now is against early marriages, except among the untouchables.

5. Sixteen years at which girls attain puberty in this district, as the district is cold one. It does not differ in different caste, communities or classes of society.

6. (1) No cohabitation takes place before puberty.

(2) Very scarce.

(3) No. No such cases come to the court.

7. No.

8. *Gaona* or *Gurbhadan* ceremony is performed in our district.

The *Gaona* ceremony is performed when the girl is above sixteen years, generally, before the consummation of marriage, but particularly in cases of parents who are old and poor *Maklova* (or *Ghera Phera*) is generally performed immediately after the marriage, except among untouchables.

9. The attainment of puberty is not a sufficient indication to justify the consummation of marriage. Two years after the puberty which is reached at about sixteen in this district.

10. The climatic condition is different in different parts of India, as to Kangra District the girl will be competent to give an intelligent consent to cohabitation at the age of eighteen years.

11. During my experience as an advocate of 45 years standing and as Vice-Chairman for 30 years I have come across no such cases as mentioned in question No. 11.

12. Yes.

13. Among the untouchables generally this is one of principal causes. The amendment had no effect, however, the improved social intercourse with the people of the plains and teaching of the recent reform movements and the war of 1914 have played a great part in the change of orthodox views.

14. No.

15. Yes. But would suggest that system of recording births in rural areas be improved by insisting that the name of child born should be registered in the birth register within a week by entrusting the work of registration to some responsible paid official.

16. Yes.

17. I would. As to punishment I would suggest that maximum punishment of six months' imprisonment for marital offences, and extra-marital offences seven years punishment. I would make the marital offences triable by 2nd class Magistrate, and extra-marital offences by a Magistrate with section 30 powers.

19. I suggest the following remedies:—

(i) Trial on the spot.

(ii) Investigation by experienced literate officer.

(iii) Trial from day to day.

20. In my opinion raising of minimum age would be more effective and the raising of minimum age will be in consonance with public opinion.

21. Propaganda work will take time, but I suggest that Penal Law would be desirable.

As to paragraph 4 in your letter I shall be agreeable to being examined orally if the committee so requires.

Oral Evidence of Mr. M. N. KAESTHA, Bar.-at-Law, Vice-Chairman, District Board, Kangra.

(Lahore, 21st September 1928.)

Chairman: I understand you are the Vice-Chairman of the District Board, Kangra.

A. Yes.

Q. How long have you been Vice-Chairman?

A. For the last 32 years.

Q. Are you connected in any way with any social movement or association?

A. No. I am an advocate of 45 years' standing practising in the rural area.

Q. Do you belong to the Arya Samaj?

A. I am a Sanatanist.

Q. With regard to the girls in the Kangra District would you differentiate between the hill tribes and the girls in the towns and in the villages or would you put them all in one class?

A. There is no difference.

Q. What is the age of puberty in Kangra?

A. Above 14 and below 16. This is with regard to all classes.

Q. What is the age of marriage? Does it come after puberty?

A. Generally.

Q. So a law penalising marriages below 14 would be practically no good.

A. No good at all. I can give instances where the girls are married at 22. In Chamba, Gadi people who were persecuted by Aurengzeb and took shelter in the high mountain ranges, marry never before 20. They are robust, strong, hale and healthy and they can carry one maund on their head.

Q. Do you know the conditions in Kulu?

A. Yes.

Q. Do you think that they are the same at Kulu as in other parts of Kangra?

A. Kulu is better. They have the cake. They do not marry below 22.

Q. We are told in Kangra District there is greater immorality than in the Punjab.

A. That is a big lie. I have mixed with the people often.

Q. Is there a system of exchanging wives for money?

A. It was some 20 years back, but it is no longer in vogue. There was polygamy and polyandry in higher ranges. It has now stopped. Since 1914 when people went to different centres of war they have brought fresh ideas. They went to Africa, Belgium and all other different places. Amongst the low classes, Lohars, Chamars, Nats, etc., this custom of bartering girls for money exists even now.

Q. Do you think there is a large number of cases of gonorrhoea or syphilis in the District?

A. I would say there are not many cases in Kangra proper. Kangra has five Tehsils and Kulu is a sub-division.

Q. Would you make a distinction between the five Tehsils and Kulu?

A. To a certain extent.

Q. Do you think marriages in Kulu take place earlier than in the five tehsils of Kangra?

A. Not earlier, but girls make their own choice in Kulu while in Kangra they have to depend upon their parents for the choice of their husbands.

Q. Among the unmarried girls of Kulu, do you think, on account of the marriage age being so high, there is greater immorality than in the five tehsils of Kangra? By immorality I mean that girls go wrong before their marriage.

A. No.

Q. We are told there is danger, if the age of consent or the age of marriage is raised, of the girls going wrong.

A. That is not the case in Kulu.

Q. What do you think is the condition of the children of Kulu women?

A. They are strong, hale and healthy.

Q. Can you say the same of the five districts of Kangra?

A. Yes.

Q. Would you say that so far as Kangra and Kulu are concerned fixing the age at 14 or 15 would be redundant?

A. Yes.

Dr. Beadon: In answer to question No. 12 you say, "yes". Can you give any instances?

A. My view is that early consummation does not take place in Kangra District except among the untouchables. These Chamars, etc., marry at the age of 2, 3 or 4. Consummation takes place when they are 11 or 12. The result is disastrous. Their progeny is very weak. In a total population of 7 lakhs and 65 thousand their number is about 75 thousand, i.e., 10 per cent. These untouchables include Kolis, Sarahas and Kalals. We don't take water from their hands.

Q. Would you mind giving us one or two definite instances of these deplorable results?

A. I have seen the last three baby shows in Dharamshala proper. I have seen that the children of those mothers who are married early are very weak, yellow looking and not strong at all. Some of them could not give full motion to their limbs. They are practically crippled. About 5 or 6 hundred are brought to the show every year. Out of these about 10 or 12 are in this deplorable condition.

Mrs. Nehru: Are conditions different in the British territory and the adjoining Chamba State?

A. Yes.

Q. What is the difference?

A. Medical aid is very badly wanted in Chamba and Mandi. They have not got such efficient medical aid as we have got within British territory. Every 10 or 12 miles we have got a rural dispensary in British territory. There are no maternity hospitals. We have got one at Dharamshala. We are trying to establish at other places also as funds allow us.

Q. I want to know if there is any difference as to the age of marriage or the age of consummation in the two territories?

A. Chamba people marry at an advanced age. Those people are very strong and stalwart. In Mandi they marry earlier. There are special customs. Low classes marry very early. The results are disastrous. Besides medical aid there are other things also operating against their health. They have not shaken off the old custom.

Q. Could you tell us whether this recent act which has been passed by the Mandi State has had any effect?

A. I am told it will have a great influence. But I cannot give any solid or concrete cases showing the influence of the act. The general impression is that it will have great influence.

Q. Is it working well?

A. About the working I cannot say. People like it.

Q. When you say girls marry so old in all these territories and at the same time when you advocate the advancing of the age of consent then do you do it with regard to your own part of the country or with regard to other parts?

A. I would raise it in other parts also because I see surrounding countries have great influence on the minds of the people. With regard to Kangra, for instance, if the people of the surrounding plains are hale and healthy and strong, that is a good thing. Neighbours have very great influence.

Q. Has this present law of consent had any effect on those untouchables amongst whom marriages take place early and those territories which adjoin your district?

A. They marry at a very early age still.

Q. Is *Gaona* ceremony still as much practised as it was before?

A. *Gaona* ceremony is essential in our part of the country. Sometimes it takes place immediately after marriage. Supposing a wedding has taken place to-day, the girl returns to her parents' house the next day, and the husband after one or two days' interval goes to fetch her to his house. This is done in order to avoid the expense of *Gaona*. They cannot stand this expenditure, sometimes. Practically it coincides with marriage. The ceremony does take place in the name of *Gaona*.

Q. How long after marriage does Maklawa ceremony take place among the untouchables?

A. 8 or 10 years after.

Q. What would be the age of the girl at the time of the Maklawa ceremony then?

A. 12. If the marriage takes place late the Maklawa ceremony takes place earlier. The duration between Maklawa and marriage is small.

Q. What is the duration generally?

A. Times are changing now. We are running at a greater speed. If the marriage takes place at 2 the Maklawa generally takes place at 12. There is a difference of 10 years. This is my past experience. But the general age is 12.

Q. Did many people go out as recruits from your part of the country during the last war?

A. Kangra stood second in the Punjab. This is clear from the grant that Kangra received for education and uplift of the rural districts.

Mr. Mudaliyar: Can you tell me what is the cause of early marriage among the untouchables?

A. There are different causes. The first is poverty. The second is the high-handedness, tyranny and oppression of the rulers of the states.

Q. How do you connect the latter with this?

A. If you commit a crime you will be pardoned if you send your daughter or daughters of such and such Chamar to the officer concerned. That is the main cause. It is mainly to protect them that they are married early.

Q. Were many recruits sent to the war from among the untouchables?

A. About 5 per cent.

Q. In answer to question No. 17 about the procedure of trials you state that the marital offences should be triable by a II class Magistrate. Is it because you have lowered the punishment that you suggest this?

A. My object was that the First Class Magistrate and the District Magistrate are not available. They are big people. Supposing such a case occurs in a far distant place, it will be very difficult for the First Class Magistrate to go to a distant place.

Q. What do you mean by a trial on the spot? Do you mean that the Magistrate should go to the place of occurrence to try the case?

A. Yes. It saves lot of trouble and lot of red-tapism. You have not to go to the High Court. You have only to look at the High Court list to realise the importance of this.

Q. If trial on the spot is not possible have you any other suggestions to make so that these offences may be properly brought to book?

A. It is a question of money. Appoint lady magistrates and lady officers.

Q. Do you think there will be a sufficient number of ladies willing to serve as magistrates in the Punjab?

A. Yes.

Q. Do you think ladies would be willing to take up the position of police officers and that they can hold that position?

A. Yes.

Q. You suggest investigation by an experienced literate officer.

A. In our district sergeants are deputed to make investigation on the spot. These people cannot write a word. They are all illiterate.

Q. But at present the offence is not cognizable within the marital state, if the age is above 12.

A. I am suggesting a trial on the spot for that purpose.

Q. What should be the rank of the officer who should investigate?

A. Sub-Inspector of Police. I do not require these sergeants. I condemn them. They have no experience at all.

Q. As a part of that suggestion you say trial must be from day to day.

A. My experience is that when a case is adjourned there is a lot of work hanging on. It is taken up after 25 days. The result is that the whole evidence disappears.

Q. That is not the case in magisterial trials. Unless the parties ask for an adjournment the case is not adjourned.

A. Sometimes witnesses purposely do not come. To avoid that I am suggesting this.

Q. Are you suggesting this because thereby you exclude the possibility of cases being compromised or is it merely because you want to expedite the trial?

A. My point was to get at the truth. In such cases you want to get at the truth.

Q. But how will it facilitate?

A. After 25 days you can manufacture witnesses. If the trial goes on from day to day the record of evidence will be there. No hired witness will be coming forward.

Q. You suggest a better system of recording births might be maintained. What is the system now prevailing?

A. I think it is compulsory to report the fact of birth within three days. These Patwaris and Chowkidars are an evil in the village. Every child which comes into this world is reported by the chowkidar. The chowkidar is the village watchman. He has got multifarious duties. He is the forest *rakha*, he has to look after sanitation.

Q. To whom would you give the duty of having these cases recorded?

A. The present system is this. Supposing a birth takes place in a village B, and a police station is situated at a distance of 14 miles, say, the chowkidar goes and reports and in many cases the births are wrongly entered in the police station register. My idea is that if instead of having these births registered at the police station which is sometimes situated at a distance of not less than 14 miles, the village Patwari is asked to maintain the register that would be much better. That would not cost anything to the Government. In villages where the Panchayat Act is extended the Panchayat might be made responsible for it.

Q. Are Panchayats recognised in your district?

A. Yes. You can apply and get them registered.

Q. You have suggested that the name of the child should be recorded in this register. Is that to facilitate identity when later the question arises?

A. Certainly.

Q. But you realise it may not be possible to give the name to the child within a week of its birth. *Nam Karan Sanskar* takes months sometimes.

A. In our district it takes 16 days. I have suggested this because I find sometimes that in the birth register one child is substituted for the other.

Q. Would you fix the period during which the name should be given?

A. Within 16 days.

Q. And at the end of that period, do you want to make it obligatory to make a second report about the name of the child?

A. Yes.

Mr. Kadri: Out of those who offered themselves as recruits, how many were rejected?

A. About 76 per cent. were rejected because they did not come up to the required physical standard.

Q. In your district also people are therefore physically weak.

A. We came out second.

Q. Are there many Musalmans in your district?

A. Very few.

Q. What percentage?

A. I can count on fingers.

Q. So far as these 10 per cent. untouchables are concerned, don't you think raising of the age of consent would be desirable?

A. It should be raised. I am not going by limited ideas. I say it should be done now.

Q. As regards the trial on the spot, don't you think that there will be insuperable difficulties in the way for finding a proper place in the village and getting pleaders, etc. There would be no prosecutor, there would be no advocate to represent the accused.

A. There is no necessity of all these. Because such like cases will be very very few. It would not be necessary to take the pleaders if the magistrate takes the trouble and records evidence.

Q. Do you know that the accused has a right to be defended?

A. But still there are railways.

Q. Don't you think that summary trials will do?

A. It will be the best, because cases will be few. Our object is to reform the people and to give speedy justice.

Q. You have suggested the maximum punishment of six months for marital cases. I have come across cases in which due to carelessness or cruelty on the part of the husbands the girls have died or have suffered some injury which have made them wrecks for the whole of their life. Do you think six months will be sufficient?

A. We want to amend the criminal law. I do not want to be hard upon the husbands. Supposing you send the husband for five years, what will be the consequences? You send the girl out as a loafer. That certainly is not the intention of the law. We want to help the ladies. We want the husbands to look after their families properly. On one side is the vice and on the other is the virtue. My point is that if any brute indulges in such a heinous offence then he should be dealt with hardly. Let that be a good warning to all the community around.

Q. Do you think it will be a sufficient deterrent to others?

A. Yes.

Q. But so far as the wife is concerned I don't think a smaller punishment will be any protection. There are very few chances of her being taken back as a wife.

A. The husband should not be dealt with hardly.

Q. What is the proportion of males and females in the Punjab and Kangra?

A. We have less females.

Q. What is the percentage?

A. For every 2,000 we have 1,500 females. That is the whole trouble. If the ratio of the males increases the respect for ladies also increases. We have to marry within our own castes. We are not a nation of brutes. We have great regard for ladies.

Q. As far as extra-marital relations are concerned would you raise the age to 18?

A. I have already said so.

Q. You advocate fixing the minimum age of marriage. Don't you think there will be any opposition by the orthodox Hindu Society to a legislation of this kind?

A. We are in the 20th century now. Opposition on the ground of religious injunctions that is sometimes urged is not real, is not substantial, it is only a show.

Written Statement, dated the 11th August 1928, of Mr. R. R. KUMRIA, M.A., President, The League of the Emancipated, Wachhowall, Lahore.

Public opinion in the Punjab is ripe for raising the age of consent and marriage. People, specially educated ones, have realised that the early consummation of marriage and the age of consent as it exists at present is proving very detrimental to the health of the nation. Infant mortality, still births, death of girls at the time of delivery, physical ailments among married girls, weak children—all increasing day by day point to the fact that something is wrong with the existing state of things.

The public in the Punjab can be divided into two classes. The first class is a set of persons who wish to move with the times, who are liberal, who see things for themselves and are trying to adapt themselves to the changing conditions.

The second class of people are old-fogies, who, like limpets, are clinging to old worn-out ideas, who go more by authority than by observation of facts, who are conservative with strong prejudices. Among them women form the bulk. They still feel that when a girl attains puberty, when menstrual flow begins, it is irreligious to keep the girl at home. She must get married.

This class although dwindling day by day, is still not negligible. This much can be said of it. It is a class of uneducated people, prejudiced and superstition-ridden, with a very narrow outlook upon life. Its opinion should not carry much weight. At the same time it cannot be ignored. Whatever people of this class say seems to have some truth in it. About the time when a girl attains puberty, the sexual instinct has also awakened. It must find satisfaction somewhere. Parents, therefore, get "panicky". They feel that they must get the girl married, the sooner the better, lest it should lead to some undesirable consequences. So far true. While effecting any reform we have to take into account this moral fact which is the objection at the back of all opposition to raising the age of consent.

Let us consult the other class of people also. Having heard what they say we shall pit one class against the other and see which one has a distinct pull over the other.

The progress of a nation depends upon its health. If India wants to keep pace with the onward-marching world her people must break the egg-shell of lethargy and idleness. The struggle for life is getting keener and keener. To bear the strain of the mighty times every nation requires strong and healthy bodies. And who is the great source of health? It is the *Mother*. What can we expect of a nation whose mothers get old before they reach middle-age, who when they ought to have been at the height of their strength and robustness, find all their graces leaving them, who are adding to the number of anæmic faces and "pocket editions", who give birth to children whose lamps of life are extinguished before they take the first breath.

One's heart sinks when one sees this sorry spectacle. Take care of the mother and you take care of the nation. This is what every educated man feels at present. Both men and women belonging to the enlightened class feel that the ages of consent and marriage should be raised beyond 15. They think that the attainment of puberty does not coincide with full physical

development of girls making them fit for cohabitation and bearing children. It is true that puberty in India almost among all classes is attained between 12 and 14. But this does not mean that puberty makes them fit for the mighty task of motherhood.

We have, now, two sides of the question before us. If we do not raise the age of consent and marriage the health of the nation is gone; if we do raise the age there is danger to morality. We seem to be on the horns of a dilemma. Practical wisdom requires that some escape may be found out of this bad fix.

The health of the nation must be saved. This is decided. We have only to grapple with the other side.

The fear that the chastity of girls will be destroyed if they are not married at puberty is idle and cowardly. During the last decade in the Punjab a number of marriages have taken place beyond the age of 15 or 16, but few cases of immorality have been noticed. Wherever moral aberrations have occurred they have been due to lack of proper guidance, care and control. That parents want to throw off their daughters to the care of others at or about the time of puberty only shows that they "funk" the heavy responsibility that is on their backs. It is the duty of parents to see that the sexual instinct of girls is properly sublimated and controlled for some time. The more it is controlled and put into better channels the riper and more powerful it will become to be able to produce a more energetic nation. To avoid great concern and vigilance which it requires on the part of parents it should not be allowed to run riot too early. Parents who do take the latter course are not doing their duty. They are idle and cowardly.

The question of guidance, care and control at or about puberty is a very serious one. We have to stud it very closely. If we are not prepared to give thought and time to this question we have no right to raise the age of marriage and consent.

We should like to suggest that girls should not be allowed to sit idle. They should be given regular and proper exercise. Merely looking after babies is not sufficient. They should be kept busy in learning technical things at home like cooking, sewing, hygiene, child welfare, etc. We should also suggest that there is a great need of religious education which is being totally neglected especially in the Punjab. The habit of offering morning and evening prayers and reciting passages and tales of purity and chastity from scriptures which was once a part of the daily duty of parents is going out of fashion. And this is having a bad effect on the growing generation.

Work, exercise and religious education are the things which can sublimate and control the growing sexual instinct of girls. Modern parents who are very anxious to make the future nation healthy and strong by raising the age of consent and marriage should know clearly that they are adding to their own responsibilities. Certainly they would not mind this addition; for that is the only manly course for India now to adopt.

One reform is allied with another. If the age of marriage and consent is raised, the type and amount of education of girls becomes a vital question. This, however, does not concern us here. We leave it as a suggestion.

Answers to the Questionnaire.

1. Certainly there is dissatisfaction with the state of the law existing at present. The reasons for that have been given above.

2. Advance should be made on the present law. Circumstances to justify that are given above.

3. Cases of seduction or rape are not very frequent in the Punjab. I do not think that the law has done anything to prevent or reduce cases of rape outside the marital state. The law can be made effective by making people aware of it and the punishment entailing its breach. The psychological side of the problem is also important. The wild impulses of human nature have

to be controlled. They can be controlled by a strong public opinion which requires a great deal of propaganda, religious, moral and legal.

4. It is only because marriages have been put off beyond 13 that girls have been protected. The law regarding age of consent can be made effective only if the age of marriage also is raised. If marriages do take place earlier than the age of consent it is not possible to check cohabitation. Public opinion is not so strong against it. Cases of transgression of law will never come to court. In India, therefore, age of consent will have no meaning unless the age of marriage is also raised to coincide with it.

5. Between 12 and 14—is true of all classes.

6. Marriages, especially in villages, still take place before the girl completes 13 years. In such cases it is not possible to check cohabitation. Cases outside the marital state do come to court but they are not common.

चट वर्षा भवेत् जीरो नव वर्षा च रोहिणी । द्वादश वर्षा भवेत् कन्या तत उत्थं रजस्रजा ॥१॥

सम्प्राप्तेकादशे वर्षे कन्या यी न विवाहिता । मासि मासि पिता माता तस्याः पित्रि शीघ्रवत् ॥२॥

माता चेव पिता चेव शीघ्र माता तथैव च । त्वसे नरकं मार्ति इष्टा कन्या रजस्रजाम् ॥३॥

इति श्रीवटीये भारवाजसंहिताधारे ।

रजस्रजा यदा नारो रोगा नार्तं धारिषे । तत्कुर्वीत तत्संनमनंभीषं, रुद्धिमान् नरा इति ।

विष्णुपुराण ।

रजोदग्धनाथं नही संसर्ग माचरित । संसर्ग यदि कुर्वीत नर के परिपचते इति ।

The first three *Shlokas* prescribe marriage at the age of 11 (eleven). The next two say that consummation of marriage should take place at puberty or when the menstrual flow begins. It may be stated here that educated people in the Punjab now do not attach any importance to such injunctions. Even uneducated ones are slowly falling away from them. The penalty of being cast into hell from their breach has almost lost its meaning.

8. *Garbhadan* ceremony is not practised in the Punjab. *Gaona* still exists in various parts of the Punjab. In big cities like Lahore and Amritsar it has completely died out. In most cases it exists only in name, the ceremony being performed a couple of days after the marriage. Sometimes the period is prolonged to some months. *Gaona* extending to 2, 3, 5, 7 years is now rare. The reason is that marriages do not take place too early.

9. I do not think that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. At least 8 years after puberty a girl's physical development may be considered to be enough to justify consummation. And since the attainment of puberty varies from 12 to 14, 15 or 16 years may be put as the minimum age below which consummation of marriage may be penalised.

10. Consequences may be either physical, moral or economic (with respect to bearing children). I think a girl after 15 is competent enough to give an intelligent consent to cohabitation with a due realisation of these consequences.

11. Girls married at the age of 11 or 12, 13 or 14 with pale anæmic faces, and tottering legs, and sometimes consumptive is a matter of daily experience in our streets. Children born of these are generally very weak and unhealthy. Many of them die within the first year. A number of still-births have been noticed.

12. Cases of serious illness or even death at the time of delivery are daily increasing. And so is infant mortality. Physical deterioration among the growing generation is also apparent. This is all the result of early consummation and maternity.

13. In the Punjab there is a strong public opinion in favour of an extension of the age of consent in marital or extra-marital cases. The younger

generation is unanimous on this point. Among the older generation the orthodox folk which still forms a majority is hard to reconeile. They are people, hardened into habits of thinking in old ruts, blindly following what is laid down by their ancestors thousands of years ago. It is, however, a sign of the happy times that the voice of such people is getting feebler and feebler day by day.

14. Not young ladies but old matrons only still cherish the desire of early marriage and early birth of grandchildren.

The rest of the questions are too technical for me to answer.

I may say in the end that the younger generation will quite welcome the advance on the present law as proposed in Sir Hari Singh Gour's Bill. They are burning with a desire to move ahead. They have seen the disease eating into the vitals of the nation. They want to get rid of it. They would not mind at all if the cry of old, orthodox, stick-in-the-mud people is ignored. Such people are a great stumbling-block in the way of national progress. They follow the saying "What was good enough of our fathers is good enough for us.", A hopeless sentiment indeed! A mere prejudice, a cowardly device to evade the riddle of life instead of facing it. The leaders of the country are requested not to go by the opinion of these people. Young men and women of the Punjab are with Sir Hari Singh Gour. If the age of consent is raised to 16 and to make it effective the age of marriage is also raised to 16 the next generation in India will be far healthier and happier.

Oral Evidence of Mr. R. R. KUMRIA, M.A., President, The League of the Emancipated, Wachhowali, Lahore.

(Lahore, 21st September 1928.)

Chairman: You are the President of the League of the Emancipated.

A. Yes.

Q. What is the function of this League?

A. The League was started last year and its business is to bring about reform amongst the young men and young women. This League has set up a standard of revolt against certain social customs that are eating into the vitals of the Indian society.

Q. Do you take it that your League is against early marriage?

A. Yes.

Q. What is the membership of your League and is it confined to young people only or to elderly men also?

A. The membership is about 250. We admit only people between the ages of 15 and 35.

Q. What is your avocation?

A. I am a teacher in the Government Intermediate College, Sialkot.

Q. Does this League work only in the city of Lahore or in the villages also?

A. The League works in the whole of the Punjab. We issue manifestos and we have got signatures from people from several districts subscribing to the creed of the League.

Q. Have you sent any manifest to the Government?

A. No, not yet. But I personally saw Mr. Sarda at Simla, but he said that the ages we advocated were more than he did.

Q. May I ask if the opinion, that you are now expressing, is the opinion of the League?

A. Yes, I have already stated in my statement that we advocate at least 15 as the age of consent and the age of marriage. We have struck a golden

mean between the extremely advanced view and the orthodox view and have fixed as the marriage age 15 for girls and 23 for boys.

Q. Would you not be satisfied with 14 and 18?

A. It is too little. With many boys the question is economic. A boy at the age of 18 cannot afford to marry.

Q. Are your ages then fixed on economic questions also?

A. They are based on physical, economic, religious and moral considerations. At 23 a boy would have finished his education and be ready to begin life in the world.

Q. Do you think that in fixing the age at 15 for girls there is any danger of any immorality further than what it is at present?

A. As I have said in my statement, there is danger if parents are not prepared to take up responsibility. I am a teacher of psychology and psychology shows that there is such danger. The girls should be under the care, guidance, and control of the parents up to a particular age.

Q. You say that "Work, exercise and religious education are the things which can sublimate and control the growing sexual instincts of girls". Do you mean this in the case of the urban population?

A. No, both urban and rural.

Q. Do you not think that in the villages girls have got plenty of work?

A. No; only the elderly women have got work, but young girls have got no other work to do except keeping children.

Q. You say "that cases of seduction or rape are not frequent in the Punjab". What do you exactly mean?

A. That is my impression. They do not occur frequently. I have asked some magistrates and judges and they say that though there were cases they do not occur frequently.

Q. We have been given cases from the criminal reports for the past 7 or 8 years and these show that the cases are increasing. Can you let us know the source of information from which you got that impression?

A. I consulted some sub-judges and magistrates and I was given to understand so.

Q. You say that the law regarding the age of consent can be made effective only if the age of marriage is also raised. Is that so?

A. That is my opinion because public opinion is not at present so strong as to bring to light cases under the Age of Consent Act.

Q. Out of these two laws penalising marriages and fixing the age of consent, which is in your opinion of greater importance?

A. Personally I want both. But I can accept the Age of Consent Act with certain qualifications. All marriages should be registered and at the time of the birth of the child the certificate of the age at marriage should be produced. The birth of a child is generally reported to the Municipal office.

Q. But at the time of the marriage the parents of the girl may say that the girl is older than what she really is. How can you prevent it?

A. The age of marriage can be verified by the Municipal office or by any other authority who registers it.

Q. Is there anything to guarantee the truth in regard to the age of the mother at the time the marriage was registered? Do you want investigation to be made for the purpose?

A. Yes, investigation should be made and there should be a separate department for the purpose, if necessary.

Q. Do you not think that it would be a lengthy procedure?

A. Yes, a lengthy procedure may be required; but all our laws are made with lengthy processes.

Q. Should registration of marriages and births be done by the same authority?

A. Yes.

Q. Has the law fixing the age of consent at 13 been effective?

A. I do not think so.

Q. Supposing we have only a marriage law and no law regarding age of consent, then?

A. The age of marriage should then be fixed at 15 or 16.

Q. Supposing we have the law of the age of consent, what ages would you suggest for marital and ultra-marital cases?

A. I would suggest 16 for both.

Q. In para. 12 you say that early consummation and maternity are responsible for all the evils of the mothers as well as infant mortality. Is that your opinion?

A. I think so.

Q. Do you realise that there are other causes also?

A. There are, but these are very big causes.

Q. Would you then modify your statement by saying that it is one of the main causes or principal causes?

A. Yes.

Dr. Beadon: You say that girls married between 11 and 13 are matters of daily experience. Have you got any definite cases?

A. I have seen girls married at 11 and 12. I know their age. Some of them were my neighbours. They were married at an early age and the result has been physical deterioration at an early age.

Q. What community do they belong to?

A. Mostly Hindus.

Q. What kind of people?

A. Middle class people.

Q. Can you give me any definite cases where the girl had consurmatation at about 13 and developed some disease?

A. I know of two or three cases.

Q. Was a child born at 13 in any of these cases and was labour easy or difficult?

A. One had a child at 13, labour was difficult and the child was weak.

Q. How long after the labour was the girl able to move about?

A. I do not remember.

Q. A great many of the orthodox people say that if children die in the first year it is mostly due to the economic condition of the country because they do not get sufficient food, etc. Is that so?

A. I have known children even in cases where they have got enough food.

Q. How many cases do you know like that?

A. I have not got statistics but that is my general impression.

Mrs. Nehru: Does your work consist of propaganda only?

A. We issue pamphlets and posters and preach to the people. We hold meetings also.

Q. Who is it that generally does the work? Have you got any executive committee?

A. Yes, we have got an executive committee which consists of 11 members. The committee issue the pamphlets and prescribe the work.

Q. What parts of Punjab have you got personal experience of?

A. Lahore, Amritsar and Sialkot.

Q. You say that if the law of the age of consent is made known it can be made effective. Can you tell us whether any section of the people are aware of it now?

A. Except a few educated people nobody else is aware of the law. In the villages nobody knows it.

Q. Can you suggest anything else to make it effective?

A. Yes, some propaganda work ought to be done to let people know that there exists such a law and they have got to obey it.

Q. What is the cause of the present law being ineffective?

A. The first is ignorance. The second is that people do not attach any importance to the provisions of the law and breaches of the same are never reported.

Q. Why?

A. Because public opinion is not so strong against it.

Q. If you think public opinion is not strong against it, do you think the starting of a new department as suggested by you to investigate such cases will be taken by the public in good grace?

A. They may not, but at least they will know it.

Q. Instead of having a new Government department for the purpose of working this law, if the power of complaint and prosecution is given to social reform organisations, what would be the result? Will there be public spirit enough in people to work this up?

A. Government will have to pick out some people to do that. But at present I do not think such people will be forthcoming. We have to seek Government help.

Mr. Mudaliyar: Am I right in presuming that you are a Hindu?

A. I am a Brahmin.

Q. Does your organisation consist of Hindus only?

A. No. It contains Hindus, Muhammadans, Sikhs, etc.

Q. Is membership confined to people who are not married early?

A. That is the general rule; but we have some latitude in the case of certain people under certain circumstances.

Q. When you refer to orthodox people, do you realise that most of the Hindus are still very orthodox?

A. Yes, especially women.

Q. Do they not think that it is a religious injunction and do they still believe in the texts?

A. Yes.

Q. Then do you not think that it is not fair to them to suggest that their real fear is that girls will lose their morality?

A. But if you study the question psychologically, you will find that it is natural for the parents to be in a hurry to get the girl married as soon as she attains puberty.

Q. But do you not think that it is a perverted view of psychology to oppose a thing on religious grounds and say that they oppose it on moral grounds?

A. In the Punjab these injunctions are only a custom. You would not find in the Punjab orthodox people of the type you find in Madras. People have got only a very vague idea of orthodox religion here.

Q. Do you think that ideas of the educated classes have been transformed through education, observation of other ways of living, etc.?

A. Yes, observation of facts, that there is physical deterioration amongst us, that there are evils in our society, that other nations are cursing us, etc.

Q. You said that there should be registration of marriages. Do you think that the orthodox section will take to it kindly?

A. I think the orthodox section will adapt itself to environments.

Q. Do you think that that section will approve of marriage being registered or will they think that it is only the thin end of the wedge for bringing in marriages under the civil law?

A. But marriages will then be solemnised all the same.

Mr. Mudaliyar: Don't you think that the older generation will feel that this is the beginning of civil contracts even among the Hindus and therefore would oppose this idea of registering marriages?

A. No, I don't think; if they so feel they are in the wrong.

Q. Wrong in what respect?

A. That this is going to lead us to civil contracts. We are registering marriages simply to safeguard against the breach of law.

Q. You don't think there will be any suspicion?

A. It is the duty of the educated classes to drive that suspicion.

Q. You don't think there will be any opposition?

A. There will be opposition to every reform.

Q. You say marriages should be registered. The age of the couple should be given to the registrar at the time of marriage. What is the necessity of any such information at the time of child birth also?

A. To see that the child is born within, below or above the age of consent.

Q. Are you suggesting that the age of marriages should be fixed?

A. That will smoothen the whole thing.

Q. If the age of marriages is fixed, is there really any necessity for fixing the age of consent within marital relations?

A. There is no necessity.

Q. But if the age of marriage is fixed at 14, would you like to have the age of consent fixed a little higher than that?

A. Yes.

Written Statement, dated the 20th August 1928, of Dr. MUFTI MUHAMMAD SADIQ, D.D., Foreign Secretary to His Holiness the Khalifa-ul-Masih, Qadian, Punjab.

In compliance with the letter of the Home Secretary to the Punjab Government No. 23873-Jdl., dated the 14th August 1928, I have the honour to submit answers to the questionnaire issued by "Age of Consent Committee" and have further to add that copies of the statements of His Holiness Khalifa-ul-Masih, Head of the Ahmadiyya Community, as submitted to the Home Secretary to Government of India, are also attached herewith, as they have close relations with the matter under enquiry of Age of Consent Committee, and may be found helpful.

Age of Consent Bill.

In our opinion this law in all the cases except those of a wife should be as stiff as possible. It will be better to raise the age from sixteen to twenty-one. As to the relations between a husband and a wife great care is necessary in passing in this Act. In our opinion thirteen years age, which had already been fixed by law, is sufficient for the purpose. The advance of education will do away with remaining defects if any. At the most it can be raised to fourteen, but should never exceed this limit.

In this country a girl at the age of fourteen is as mature as a girl of seventeen in Europe because owing to climatic conditions growth is more rapid in this country than in Europe. If the age limit is raised, the

infringement of the law will be oftener and its respect will be lessened in the public eye.

Again court cases will be general and as women shall have to attend courts as well, people who consider it a disgrace for a woman to attend an open court, will copy to open broils and hundreds of lives shall be involved and peace and happiness of thousands shall be endangered. In our opinion if the age limit is raised to fourteen, there is no harm because girls at fourteen are generally under age and their protection for considerations of public health is necessary. Even in this case a husband should be exempted from imprisonment and his punishment should be restricted to fine only, otherwise a home in which such a case happens shall altogether be destroyed.

A Bill to regulate Marriage of Children amongst the Hindus.

The Sub-committee has tried to change this bill into a general law applicable to the people of all religions. But this is quite unjust. In principle we admit that the marriage of girls should not be allowed to take place except at an age when they are able to understand what is good for them. Islamic injunction on this head is that a woman should never be married except with her own free will, and so long as a woman has not attained to the age of discretion, her consent is a mere deception and has no value at all. Islam allows child marriages in certain urgent cases but it lays down that a girl in such a case on attaining to the age of discretion, can, if she dislikes the marriage, dissolve it by presenting herself before a Magistrate. Other sects of Islam are of opinion that such a marriage if arranged by her father cannot be dissolved, but our sect holds that all such marriages whether contracted by a father or some other relative can hold only when the girl after coming to age does not repudiate it. When a woman or a girl at the age of discretion has the right of free consent in her marriage which can overrule that of her father's, there is no reason why she should lose it when the marriage has taken place in her childhood. It happens sometimes amongst uneducated people that the relatives of fatherless girls marry them to such persons who cannot do justice to them and destroy the happiness of their lives. In such cases when a father is old or he is going on some dangerous journey, the Islamic law allows him to marry his child girl to prevent her relatives doing injustice to her, but her right of consent remains valid if on coming to age she feels that her father had erred in her marriage she has the right to repudiate it.

Hence in our opinion child marriage should not be limited by law, but should be discouraged by education and public lectures, and this is already being done throughout the country. But the passing of such a law is full of pitfalls and dangers.

Our country is so backward in education that many village girls whose parents stand in danger of leaving them in the hands of unjust relatives and are prohibited by this law to provide for them their future husbands, shall have to suffer great wrongs.

Again Indian girls at the age of fourteen or sixteen are not so mature in reason that they can act independently free from the control of their relatives. Hence the passing of this law, while doing little good to the health of the country, will leave such country girls, whose parents are either away from their homes or are dead, victims to the greed and selfishness of their relatives and those who are acquainted with the country life of India know that such cases are often taking place in villages far removed from cities. As the country has begun to feel of itself, that the marriage of girls should take place in a mature age, there is no need of passing such a law, but it is imperative that the girls should have the right to repudiation and this will be sufficient to remove all defects of early marriages. We know that the other religions are against Islamic teachings on this head

but there is no reason whatever why we should be obliged to follow the injunctions. In our opinion Islamic law does not oppose such a law, but owing to the defects mentioned above, we wish to amend it in this light.

A Bill further to amend the Special Marriage Act, 1872.

This bill purports to make the intermarriage of Hindus, Muslims and Sikhs, etc., lawful. According to Islamic teachings a Muslim can marry a woman of any religion which professes to follow a revealed book, but he is prohibited to marry any other woman, nor a Muslim woman is allowed to marry a non-Muslim. Some of the speakers in favour of this bill has said that no religion has a right to interfere in such social laws, but their assertions have no reasonable foundation. When the Government has been changed into a representative Government and the representatives of all religions have a hand in passing the laws of the country there is no reason why the legislature should pass such laws which are not only against the common law of a religion but are opposed to the very spirit of the teachings of its revealed book. To pass such laws is a religious interference and no Muslims can take part in a legislature which passes law which are diametrically opposed to Islamic teachings. Muslims, at the time of their rule, have never interfered in religious matters and the British Government has time and again made declaration to the same effect. Hence Government ought not to take any part whatever in the passing of such Acts and our sect is on religious grounds opposed to it and we are, thus, obliged to take an active part in opposing its passage through the legislature.

Answers to the Questionnaire.

5. Girls in this part of the country generally attain puberty at the age of 13.

6. Muslim girls are generally married at or after the age of 13, but as a rule girls are made over to the husbands after 18 years; and hence this question does not arise in the case of Muslim Community.

7. Islam allows child marriages in certain urgent cases, but it lays down that a girl in such a case on attaining to the age of discretion, can, if she dislikes the marriage, dissolve it by presenting herself before a Magistrate. Other sects of Muslims hold that such marriages cannot be dissolved, but we, Ahmadies do.

9—10. We have already submitted our opinion on these points in connection with the Age of Consent Committee through the Home Secretary to Government of India as well as that of Government of Punjab.

13. It may be due to the ill-health or general debility of girls that owing to early maternity, they or their children might have lost their lives; but generally it is not so with the girls who become mothers at the age of 14 or 15 years.

14. Among the Muslims marriages take place generally at or after the age of 14 years, but now-a-days on account of the spread of education marriages are often delayed among the educated people in urban as well as in rural areas.

17. We have given our opinion that this law (Age of Consent Bill) in all the cases except those of a wife should be as stiff as possible, but in the case of a wife, the punishment for the husband should be restricted to fine only, otherwise a house in which generally a case happens would be altogether destroyed.

18. In a case of a wife the punishment proposed by us is restricted to fine only; consequently such cases can be tried by 3rd Class Magistrates.

21. We have already given our opinion that the age for marriage as given in the present law is sufficient. Any other defects will be removed by the advance of education and Government should rely on it.

**Oral Evidence of Mr. DIN MUHAMMAD QADIAN, on behalf of
Dr. Mufti Muhammad Sadiq, Qadian.**

(Lahore, 21st September 1928.)

Chairman: Do I understand your opinion to be that you would not object to the age for marriage being fixed at 14, i.e., any marriage below 14 should be penalised?

A. The Ahmediya Community will not object to it. We believe in progressive legislation.

Q. There are two remedies, one is a bill like the Sarda's and the other is fixing the age of consent only. Some people favour the former and some favour the latter and some would have both. What is your opinion?

A. I am in favour of 14 as the age of consent and not in favour of the age of marriage.

Q. In answer to question No. 21, you have said "the age for marriage as given in the present law will be sufficient. Any advance will be" From that I take it that you have no objection to a law of marriage?

A. So far as I understand we do not have any religious objection to it. Our religion upholds that marriage should be between grown up people, but taking into consideration the present stage of the country, its educational, social and intellectual standards and the conservative nature of the people, I think that as a practical measure the age of consent may be raised to 14, but marriage itself, on account of certain inherent defects in the society, should be left untouched.

Q. Then in answer to question 21, you mean the age of consent only?

A. Yes.

Q. I would draw your attention to your answer to question 14, where you say that amongst the Mohammedans marriage takes place at or after 14. If the marriage takes place even after 14 where would be the objection to penalise marriages below 14?

A. The difficulty is that some people may die and if they leave orphans behind the relatives for their own selfish motives hand over the girl to another person who may be unsuitable. If the father performs the ceremony the age of consent can wait.

Q. You are considering special cases. Are there many such cases?

A. There are a good number of such cases.

Q. Does it apply to girls of 2, 3 or 4?

A. Yes.

Q. Do you mean to say that a father will marry his girl 5 years old?

A. Yes.

Q. But in such cases the brother or mother of the girl must be living?

A. In some cases they have no near relative left behind.

Q. Do you think the present age of consent laying down the age at 13 has been effective at all in protecting the girls below 13 against consummation?

A. Yes, I think so.

Q. Do you think that girls below 14 will be protected against consummation by husbands?

A. Most of them.

Q. Do you know the condition of the Hindus among whom you may have happened to live?

A. A little.

Q. Do you think the same thing applies to them?

A. Their consummation takes place rarely below 13.

Q. Which part of the Punjab you are talking of?

A. I am talking of Lahore. I have been residing in Gurdaspur District, I have travelled all over the Punjab and have many Hindu friends, but I cannot be dogmatic on this point.

Q. We want to know what is the condition among the Mohammedans and what is the condition among the Hindus?

A. I cannot say with certainty about the Hindus. All I can say is that most of them are raising the age of consent and have no child marriages.

Q. We are told that the present law has been ineffective inasmuch as consummation of marriage is a secret act and such cases although they occur largely are never brought to light or very few are brought to light except when there is a case of grave injury. What is your opinion?

A. I think if consummation takes place before 13 injury would be done.

Q. But nobody brings them to light. People try to hush up such cases?

A. I do not think such cases occur frequently.

Q. Would you be saying that with more certainty that among Mohammedans such cases do not occur?

A. I can say with certainty that in 99 per cent. consummation does not take place before 13.

Q. In answer to question No. 2, you say "In this country a girl at the age of 14 is mature as a girl of 17 is in Europe". Do I understand you to say that the age of majority of the girl which now stands at 18 in respect of both Mohammedan and Hindu law may be reduced to 14?

A. If the girl is so well developed she can be called major at 14.

Q. But according to the law she will be considered major only at 18, for instance she cannot deal with transactions.

A. No, she would not be major for all transactions. The age of majority is different in different things, for instance we cannot entrust transactions in the hands of a girl of 14; she would be minor for that.

Q. With regard to her own person you agree to 14?

A. Yes, for the present.

Q. If a girl has not judgment enough to deal with ordinary transactions how can she be competent to dispose of her own person at 14?

A. My idea is that girls are still babies even at 20.

Q. On page 172 of your statement you say "Indian girls at the age of 14"

A. I have just said that so far religious questions are concerned according to the Mohammedan law if a girl is 15 years old she is considered mature for prayers. As the aspects of life differ the age of majority differs, but so far as question of sexual intercourse is concerned she is mature.

Q. In para. 4 you say that a girl of 14 if unprovided by her father is so immature that she will fall victim to her relation and at the same time you think that a girl of 14 can give her consent? How is that?

A. Yes, so far as her husband is concerned she has got certain relations which she can perform at the age of 14.

Q. You mean that she can be trusted to consent in intra-marital cases?

A. Yes. It is only now that we recommend 14, but the age may be raised progressively.

Q. You have made a recommendation that the girls should have a right of repudiation. You mean to say whether they are married by the father or not?

A. Yes.

Q. Is that what the Ahmedia community holds or you suggest that it should be made the law of the land?

A. I think it should be made a law of the land.

Q. But would it not go against the tenets of other people?

A. There are no tenets in Mohammedan law; neither about the age of marriage nor about the age limit. The attainment of majority is the only law. Islam is a universal religion, so it must take the various climatic conditions into consideration.

Q. Is it laid down that a girl should be married at a certain age?

A. No, Quoran says that girls as a rule should be married when they have attained the age of discretion or grown up physically.

Q. Then does it not become a question of utility and practical politics?

A. Yes.

Q. Does your sect hold this view?

A. Not only the Ahmedia Community but also persons who belong to the Hanafi sect hold the same point of view. There are little differences but on this point their view is that a woman has a right to repudiate her marriage when she has attained the age of majority before or after consummation. There is an express teaching of the Prophet that girls should be asked to give their consent before their marriage; there has been a good deal of discussion. Some jurists have taken into consideration stray cases in the life of the Prophet against that express teaching.

Q. But that goes against your religion?

A. If the father on account of certain circumstances gave his daughter in marriage or even promised her, she has a right as soon as she attains majority to dissolve it and she can even go to the court.

Q. Have you known of any cases of girls either Hindu or Mahomedan having become mothers below 13 or 14?

A. No, I do not know.

Dr. Beadon: Supposing a man is dying and marries his girl, do you think the society will protect the girl?

A. But the society has not awakened to a sense of this duty.

Q. Do you think society is indifferent or it is a matter which should be left to the parents?

A. As long as society is not advanced it should be the duty of the parents.

Q. In case a father married his daughter to an older man and he himself dies, who is to protect the girl from her older husband? Don't you think there should be legislation on this matter?

A. Yes, you can have it.

Q. Supposing a girl is married at 12 to a man of 30 and she has no parents behind her, who is going to protect her? What arrangement would you make for her? The husband claims her and the girl is not fit to go.

A. You have got a law of consent.

Q. You think we should have a law for age of consent?

A. Yes.

Q. Do you think it will be desirable to raise the extra-marital age beyond 14?

A. I have not thought over this point.

Q. You say that age of consent in marital cases should be left at 14. Do you think a girl is fit to be a mother at the age of 14?

A. If the girl has attained the age of majority, she is fit.

Q. Have you met any cases in which a girl was married and became mother at 14?

A. No.

Mr. Mudaliyar: In your community a girl can repudiate marriage after she attains puberty?

A. Yes.

Q. Is that one of the reasons that you are against any legislation fixing the age of marriage?

A. Yes.

Q. Supposing that is not a safeguard in other communities. Marriage once made would be binding for the whole life. Would you hold the same opinion?

A. I cannot say about others' needs.

Q. Supposing these factors did not exist in your community, would you still have maintained that the age of consent is enough?

A. Islam authorises Government to intervene in certain exigencies, but those exigencies must not go against the law of Islam. But these are extreme cases.

Q. Among the Hindus there is no power of repudiation. In such cases would you hold that the law of marriage would do good or do you think the age of consent would be quite enough?

A. In those cases in which certain safeguards are not provided in certain communities the Government may do whatever it likes. I cannot suggest anything.

Q. Would you like the Ahmedia sect being exempted if there is a law penalising marriages?

A. They are in a minority and would not like exceptions. The law should be for the whole.

Mr. Kadri: May I know what is the membership of your Ahmedia community?

A. It is about a million.

Q. Are they in the Punjab or are they all over the country?

A. They are all over the world.

Q. May I take it that the views expressed in your statement are those held by the Mohammedans generally or are they held by your community only?

A. These are the views of the Ahmedia community, but there is very little difference.

Q. You agree that the age of marriage should be the age of *balugh*? What is the age of *balugh*?

A. That is a medical point.

Q. Abu Hanifa has laid down the age of puberty between 12 and 15?

A. Although we respect him, but we do not think we agree with him. The age of puberty varies according to climatic influences. The age of puberty in Deccan is reached at 12 and even there are girls, who are known to have attained puberty at 10. Mohammedan girls in England attain puberty at the age of 25 and we cannot raise any objection to it.

Q. You are of the opinion that your religion is progressive and not inelastic?

A. Yes.

Q. Also you say that the object of marriage according to Islam is procreation of *Auladi Saleh*?

A. That is one of the objects and the other is that they may live together and be able to protect themselves from evil influences.

Q. *Auladi Saleh* means children of sound mind and sound body fit to serve God and his creatures. Then according to Islam marriage should be at an age when it should be possible for the couple to produce strong children? Is it not?

A. Certainly.

Q. If medical opinion says that before the age of 14 or 15 it is not possible for a girl to have healthy and strong children, do you think you will be justified in your view?

A. Medical opinion is not the only thing to be considered. We have to take into consideration the stage at which the people have arrived, their conservativeness, and also whether it would be practicable and would not create any discontent?

Q. Is it your view that at present Mohammedan society is not prepared to advise any marriage legislation?

A. No, so far as my community is concerned.

Q. So far as the age of consent is concerned, you would raise it to 14?

A. Yes.

Q. You know that Islam forbids connection in non-marital cases and the punishment is stoning to death. Don't you therefore think that in the case of extra-marital connections the age limit should be fixed at a much higher point than in the case of husbands?

A. Personally I would not object, but I have no instructions on this point. Islam is very hard on this point.

Q. You have said that in the case of husbands the punishment should be only fine?

A. Yes.

Q. I may tell you that there are cases in which we have found that the husband treated his wife with cruelty, made her cripple for life and what is more brought about her death. Do you think fine will be sufficient in such cases?

A. Such cases may be tried under the Indian Penal Code.

Q. I know of one husband. He was about 30 years old. He had already one wife who had gone to her parents and on account of some quarrel would not return. He married another girl of 10 or 11 years and immediately after the marriage consummated it. The girl was undeveloped and the result was entirely ruinous for her. In such cases do you think that fine only would be enough.

A. But I do not wish to put hardship on thousands for the sake of one.

Q. If we provide imprisonment and fine both it will be discretion with the Magistrate to inflict fine or imprisonment. Do you think it will be better?

A. No.

Q. You would not recommend that such hard cases should be treated on merits?

A. No.

Q. But what about the punishment that already exists?

A. It should be done away with.

Q. In the case of boys will not the fine be a punishment to the parents?

A. The parents should be responsible for their sons.

Q. One witness suggested flogging in such cases. Would you advocate it?

A. No.

Q. Have you any objection to the registration of marriages?

A. No.

Q. Have you any objection to the registration of marriages?

A. There is no harm in having registers. It is according to the spirit of Islam that there should be some such thing.

Q. Who should be the officer charged with the duty of maintaining these registers?

A. I think the Quazis and Moulvis may keep the registers as they keep in the Punjab.

Q. Does such a law exist in the Punjab?

A. Only in our community we have got registers. I have also heard that in certain villages Moulvis keep such registers.

Q. Have you got Quazis and Moulvis in all villages and towns in the Punjab?

A. We have got *Amir* of every *jamat* in every locality.

Q. Is that register open for inspection by the public?

A. Yes, if people like they can have copies. We also report in the papers.

Q. It is village *Amirs* who can solemnize marriages or any one else can do it?

A. They are responsible people and solemnize marriages, but in their absence somebody who knows can do it provided he has been authorised by the *Amir*. But in the case of ordinary people there is no such restriction.

Q. What would you do in the case of those people?

A. Moulvis who are in charge of mosques can be entrusted with this responsibility, because marriages are generally performed in mosques..

Q. But in my part of the country marriages are performed in private houses?

A. According to the Holy Quaran marriages should be recorded.

Oral Evidence of S. ABHEY SINGH, Shiromani Gurdwara Parbandhak Committee, Amritsar.

(Lahore, 21st September 1928.)

Chairman: Are you connected with the Shiromani Gurdwara Parbandhak Committee?

A. Yes, I am the Secretary.

Q. Is it different from the Chief Khalsa Diwan?

A. Yes, the Gurdwara Committee came into existence in 1921, with the object of reforming the management of gurdwaras.

Q. What would you put the age of marriage for girls in this part of the country?

A. Among Sikhs girls are married at the age of 16. They belong mostly to the rural areas and in the urban areas Sikhs generally follow the Hindus. On account of education and social reform movement there is hardly any complaint of early marriage among the Sikhs. In the rural areas we have got a system of Muklawas.

Q. Does Muklawas take place even if the girl is 18 years old?

A. No matter when the marriage takes place Muklawas system still holds good.

Q. That is in the rural areas?

A. Yes.

Q. What about the towns?

A. In the towns they do not have the Muklawas system, but they marry their girls at 16 or 17.

Q. Do you mean to say that marriages in the towns do not take place below 16?

A. I cannot say definitely; it may be 14 or 15, but there is no general complaint about early marriages. The cases of early marriage if at all are very rare.

Q. Do you know anything about the Hindus among whom you may have lived?

A. Yes, I have experience of both.

Q. Which place do you belong to?

A. I have been living in Amritsar for the last 6 years.

Q. Do you know the conditions in the villages amongst communities other than the Sikhs?

A. I do not know about Mohammedans, but Hindus in the villages are very anxious to get their girls married early.

Q. Do you think that there is some difference in the marriage, so far as the Hindus are concerned, between the towns and the villages?

A. I think not.

Q. Do you not think that in urban areas people are raising the marriageable age?

A. This is due to the reformation brought about by education.

Q. Does not the same thing happen in the villages?

A. No, because education does not spread to the villages.

Q. Do the Sikhs look upon early consummation as an evil?

A. Yes.

Q. Do you think a law penalising marriages before a certain age is desirable?

A. It is desirable.

Q. What are the ages you will then have for boys and girls?

A. For girls not less than 15 and for boys not less than 18.

Q. Would you have a law penalising marriages before a certain age or would you be content with raising the age of consent?

A. The Age of Consent Act has been there for scores of years since the condition of the Penal Code, but still it has not been effective.

Q. Would you therefore rather have a law penalising marriage?

A. Yes, the age of consent has not been effective. In Multan I have known a man of 45 cohabiting with a girl of 11, but nobody complained about it to the police.

Q. Was he a Hindu?

A. Yes.

Q. Do you think such cases are going on, and they do not see the light of day?

A. I cannot say.

Q. Do you think that if we allow marriages to take place at any age, but penalise Muklawa till 16 or 17, that will be effective?

A. Yes, it would be effective. My only object is that a husband and wife should not cohabit till they are of a proper age.

Q. Do you think our object will be served by prohibiting Gaona or Muklawa till the girl is of a certain age, say 16 or 17?

A. But it is easier to find out a marriage that has taken place than Muklawa. Muklawa is not so public as marriage.

Dr. Beadon: Do you think that if girls are not married till an advanced age, say till 19 or 20, they are not content with living a celibate life, but they go off and have relations with other men?

A. No, as far as I know about the Hindus and Sikhs, there are very few girls who would like to bring infamy on their houses. They are generally content with their lot.

Q. We have been told that there is a very decided amount of infanticide, not exactly due to the killing of girls, but the girl child is uncared for

and neglected and left to die. Does that custom obtain amongst the Jats only or among the Sikhs also?

A. Yes, amongst the rural classes there is a dislike for girl children, especially amongst the Jats, and the children are left uncared for and die.

Q. We were told that if the first child is a boy and the second is a girl it would be reared, but a first girl would be neglected. Is that so?

A. There is no rule about it. The fact is that these people want a male child and if the first is a male child and the second a female, the female child is allowed to live because it will be a sister to the male child. I have known of cases in which the female child is neglected and left to die.

Q. Are they the labouring classes or the middle classes who are not well off?

A. They are the ignorant classes who think that a girl child is not the gift of God. It is common amongst the Jats. They think that a girl is an economic strain whereas the son is a help.

Q. We have been told that rape is more common among the Jats than among other classes, because they cannot get wives. Is that correct?

A. You can trace them to the statement that girls amongst them are few. That is correct.

Q. Can you give us statistics?

A. I cannot give you statistics, but I know of Jats in Gujranwala. They remain unmarried till very late because they are unable to get wives. There is therefore the temptation.

A. Among the Bania classes, is early marriage more common in Amritsar than in other places of the Punjab?

A. It is common among all Bania classes.

Q. Do you know of any cases of early marriage?

A. Yes; only last month a friend of mine, a Hindu gentleman was very anxious to marry his son who was 8 years old. He wanted that the marriage should be performed within 6 months because the girl whom he wanted to get married to his boy was the only daughter of her parents. The father was dead and the girl was the sole heir to a large property. It was therefore necessary that the betrothal should take place soon, as otherwise somebody else would marry the girl. These things happen everywhere.

Q. Do you consider that early consummation is the cause of maternal and infantile mortality?

A. I cannot express any opinion on that, because I am not a Doctor.

Q. You say that the law regarding the age of consent has been ineffective. Do you not think that part of the reason why the law is not effective is because the age is too low, that it is impossible to find out whether consummation has taken place at a certain age or not?

A. No, it is because nobody among the villages knows anything about the age of consent and that it penalises consummation before a certain age. The Police cannot interfere. The wife will never complain against her own husband.

Q. Supposing steps are taken to publish the law and broadcast it to make people realise that there is such a law, would it then be effective?

A. No, nobody would complain.

Q. The relations can make a complaint?

A. The relations will not interfere in such matters unless they want to become enemies of the family.

Q. Will the law be effective if the right to complain is given to the public?

A. You will find very few persons who will be bold enough to do that and become enemies of the parties.

Q. You say then that fixing the age of marriage is the only effective remedy. What would you fix as the age?

A. 15 for girls and 18 for boys.

Q. Would that be acceptable to the Sikh public?

A. Yes.

Q. Is there any religious injunction against it according to the Sikhs?

A. No.

Q. Would there be objection in your part of the country from the Hindu community?

A. They might object to it.

Q. Would it be a large percentage?

A. It might be a considerable percentage. But my opinion is that in such matters you must not care for the outcry. Sati could not have been abolished without Government intervention.

Q. Orthodox opinion does not put Sati and this on the same basis. They say that many early marriages have taken place without bad results.

A. Personally I do not know of anything bad having happened in the case of an early married girl.

Q. Can you not give a single instance where an early married girl has been ruined in health?

A. No.

Q. If by any chance legislation fixing an age for marriage is not passed, would you then advocate an age of consent as being the second best?

A. It is some progressive step however slight.

Q. Can you give us any suggestions for making it effective?

A. I do not think it can be effective, because the primary witness, the wife, will not give evidence.

Q. Is not society so far advanced that public opinion will rise against the man and try to punish him?

A. No.

Q. Will social reform organisations take it up?

A. No, because social reform organisations also consist of men who have got relatives.

Q. Do you not think it will have an indirect effect upon the people if cohabitation is penalised according to law?

A. Yes, it will be some progressive step, however slight.

Q. As for ultra marital relations, it is suggested that the age may be raised to 18, because till 18 a girl is a minor and she cannot dispose of property. What is your view.

A. Yes, 18 should be the lowest limit.

Q. Do you think that one should have sympathy with persons committing such offences?

A. No, I think it is worse than murder.

Q. Would you advocate registration of marriages? Is there any such practice amongst your community?

A. Yes, it ought to be introduced if you are going to have a law penalising marriages.

Q. Who, in your opinion, should be the officer who may be authorised to keep these registers?

A. Anybody except the police. Municipalities in the cities and Panchayats in the villages. They are some Panchayats in the villages which are proving a success.

**Written Statement, dated the 20th August 1928, of Mr. K. C. ROY,
M.L.A., Simla.**

1. The age limit was raised from 10 to 12 years by Act X of 1891 for the following reasons :—

“ The limit at which the age of consent is now fixed (i.e., 10 years) favours the premature consummation by adult husbands of marriages with children who have not reached the age of puberty, and is thus, in the unanimous opinion of medical authorities, productive of grievous suffering and permanent injury to child-wives and of physical deterioration in the community to which they belong.”

2. It was raised from 12 to 14 years by Act XIX of 1925 for the following reasons :—

“ Books of Medical Jurisprudence established the fact that the age of puberty in India is attained by a girl upon her reaching the age of 14. Even though puberty may be reached at that age, it is obvious that girls are unfit for sexual cohabitation till they are older and more developed in physique and strength. The appalling infant mortality in the country is partially ascribed to early marriages and the consummation which follows with immature girls. It is, therefore, not only for the protection of minor girls as also of their progeny that the age of consent should be raised to at least 14 years.”

By the same Act age limit, between husband and wife was raised to 13 years.

3. Changes sought to be introduced by Sir Hari Singh's Bill :

(a) Age of consent to be raised to 16.

(b) A new section punishing intercourse by husband with wife when she is over 13, but below 14, a sort of minor offence. This would mean as between husband and wife intercourse would be—

(i) rape if she is below 13.

(ii) a minor offence if between 13 and 14, and

(iii) no offence if over 14.

Answers to Questionnaire.

1. The masses are uneducated and ignorant and there is no strong opinion on this point. But among the educated people and the newspaper reading public, I think there is a genuine desire to improve the law. But this does not express itself in dissatisfaction; it only means that if the law is changed for the better it will be welcomed by this section of the public. In no country, however, legislation for social improvement is urged by the ignorant and the uneducated.

2. Physical deterioration of the people of India as a whole can hardly be denied. The practice of early marriage, of early consummation of marriage and of early child bearing is common among people. From the medical, the physiological, and the economic points of view, these are vicious practices. Consequently whatever is calculated to improve the existing state of affairs must be welcome. An advance on the present law is therefore necessary to save the nation from continued national deterioration and to improve the social and economic position of Indian nationhood.

3. Crimes of seduction or rape are by no means uncommon and infrequent in Bengal, Delhi and the Punjab. In the Punjab and Delhi, excepting where girls are sold for money, girls are not married below the age of 14 among the Jat Sikhs and the Jat Mohammedans and other rural and agricultural

tribes, and these are the people who generally commit crimes. The abduction of married women with which we are not now dealing is much more common in their parts.

As regards the second part of the question I have got no statistics with me and it is difficult to pass an opinion. But certain general observations may be made here. Under Section 361 of the Indian Penal Code, the age limit for a girl for the offence of kidnapping from the lawful guardianship is 16 years. Under section 375 the age limit for the offence of rape is 14 years. Where girls are kidnapped they are generally outraged, but if the girl is over 14 the offender cannot be punished for the second offence. It would therefore be well in order to make the law more effective to raise the age limit outside marital stage to 16 years, so that an accused may be punished both for rape and for kidnapping. Girls in this country being still uneducated and unsophisticated it is easy whether by inducement or by threats to obtain their consent. The only way to help them is to raise the age of consent.

4. I have no statistics in hand and the only case which I can recollect is in the Punjab in which a husband was punished was disposed of sometime ago by Mr. Justice Addison of the Lahore High Court who maintained the conviction, but reduced the sentence. I have not been able to get exact details, but if I get them I shall supply them later. As already stated by me the practice of early marriage in the Punjab obtains only among low class of people, many of them are outsiders, such as U. P. *Dhobis*, *Ghasiaras*. These, I am quite sure, have not been affected by the amendment of 1925 and are quite unaware of the law on the subject. From the nature of things, if such offences are committed, they seldom come to light. If the parents of the girl are poor or socially inferior they can ill afford to run to court and probably spoil the future of their daughter. I should think that among the richer classes such offences are very rare. The only effective remedy, in my opinion, is to raise the marriage age.

5. About 14 years. It might be slightly earlier among classes that marry early. The main factor is climate, social environment, the atmosphere in which the girl lives.

6. (1) It is very rare.

(2) It is common, and in fact it is encouraged one reason being that there is a fear (excepting in highly respectable and educated homes) that the girl might go bad, either herself under unhealthy environment or pressed by unscrupulous men.

(3) It is very rare.

I have not heard of any court cases excepting one.

7. Muhammedan religion prescribes that a girl should be married as soon as she attains puberty, and from the strict religious point of view marriages sooner than that are not looked upon with favour. Among the Hindus according to the *Shastras* the ideal age for the marriage of girl is 9 and even less, and there are people found even now who defend early marriages on that ground. I am not familiar with the exact nature of injunction and the penalties involved. It may also be mentioned that under Canon Law marriage of a girl below 14 and of boy below 16 or perhaps of 18 (I am writing from memory) cannot be performed without a special dispensation.

8. In the Punjab it is commonly called *Mukhlawa*, short form of *Munh Khulhawa*, that is to say, when the husband can see the face of his wife. This ceremony coincides with the consummation of marriage and is performed generally as soon as puberty has been attained. Sometimes it is delayed also, but the reason then is either the parents are very fond of their girl and wish to keep her a little longer in their house or they are too poor and unable to meet the expenses connected with the ceremony. But there are no such ceremonies to-day in Bengal.

9. I do not consider that puberty is sufficient indication of physical maturity and I think that 16 is the earliest age at which a girl ought to start child bearing, especially as happens in this country if they are going to bear several children.

10. Certainly not before she is 16 years, in the case of a girl brought up in normal circumstances in a good family.

11. I regret I have no details, but I have met lady doctors who have given sad description of child mothers coming into hospitals with all sorts of troubles. A reference to any modern hospital may be made to confirm this.

12. Yes. It hardly needs discussion. I read the other day that in Bengal half the children die before attaining the age of 15 years. Child marriages and early motherhood will easily be the first cause in this connection.

13. As already stated the masses are not affected. But, among the educated classes, I think, public opinion has been stirred chiefly on account of Sarda's Bill.

14. Women certainly favour early marriage and even early maternity for their daughters. But consummation before puberty is not desired and does not take place ordinarily. As to marriage as long as the parents think it one of the sacred and religious duties, and an obligation to marry and see their children settled in their life time, there will be a tendency especially among women folk to marry their children, early, all the more if the parents are of an advanced age. Poverty and economic causes have much to do with this.

15. I have no experience, especially as reported cases are few, but I should think that due to the practice of registration of births in larger cities and municipalities their ought to be less and decreasing difficulty in ascertaining the age. Registration is not so complete in villages and steps should be taken towards improvement in that direction.

16. Yes..

17. It would be convenient if the marital and extra-marital offences are given separate sections in the Penal Code. The maximum punishment already prescribed is in my opinion adequate. What needs improvement is, (1) the age of consent, (2) the detection and investigation of offences, and (3) the prosecuting agency in court. Offences under these sections should not be enquired into by a Police Officer below the rank of an Inspector and such cases should be tried by the Court of Sessions. They are no rare that this will not involve extra work for a District Magistrate. The Code gives jurisdiction to all First Class Magistrates. They should also be conducted in court by the Public Prosecutor himself and not by the Police.

18. Offences within the marital stage should remain non-cognizable to prevent Police interference and harassment, unless the age of the girl is below 12.

19. I have no remarks to make as the offences are already not compoundable and except in the case of the husband, cognizable. If the offence is made non-cognizable in every case convictions will be even less than they are now.

20. If the minimum age of marriage could be fixed by legislation it will certainly be more effective than Penal Legislation fixing a higher age of consent. Supposing Mr. Sarda's bill was to become law there would be no marital cases. But I fear that at the present time public opinion is against Sarda's Bill though I am in favour of it in its amended form.

21. Personally I would prefer reform to legislation, but I do not agree with the view that the State has no right to interfere in social reform problems. There are, however, in the affairs of the family and the individuals certain natural rights which the State should not overrule. But the practice of early marriage, and the kidnapping of children for immoral purposes

is so great an evil in this country and is doing so great a harm to the progress of the country that drastic measures may be necessary, and I think time has come to have recourse to the Penal Law. From this point of view I would strongly support Mr. Sarda's Bill. It will meet with opposition and may cause strife and hardship in individual cases, but all these will be well worth the good results that are bound to follow. If this Bill could become law it will be the first effective step towards physical regeneration of the country.

Oral Evidence of Mr. K. C. ROY, M.L.A., Delhi.

(Delhi, 9th October 1928.)

Chairman: What is the age you would go upto now in marital cases?

A. 16.

Q. And for marriage.

A. I would rather confine myself to the age of consent. I am looking at Mr. Sarda's bill as a practical proposition, and if it ever passes the Legislative Assembly it will never go beyond the Council of State. I would rather deal with the age of consent than the age of marriage. There is no likelihood of Sarda's bill passing through. If it passes the Assembly it will be knocked at the head by the Council of State.

Q. Do you know whether the Age of Consent law as amended in 1925 has been effective?

A. It has produced a great moral effect. It is certainly a deterrent.

Q. Have you any reason to believe that in a large number of cases cohabitation takes place below 13?

A. Practically there are very few cases to my knowledge of cohabitation below 13.

Q. Do you differentiate between marital and extra-marital cases?

A. I do, with a view to prevent abduction and adultery.

Q. With regard to punishment, would you like to have the same punishment in both cases?

A. I would like to have a uniform deterrent punishment both within marriage and outside marriage, because crime is a crime.

Q. In answer to question No. 18, you say offences within the marital stage should remain non-cognizable to prevent police interference and harassment unless the age of the girl is below 12. If it is to be non-cognizable how is it to see the light of day? Who is to bring the complaint?

A. The parents and guardians of the girl and the boy.

Q. Not anybody belonging to the public?

A. No.

Q. It has been suggested that they are the least interested to bring these cases to court, both on account of their reputation and the likelihood of the son-in-law being sent to jail and the girl suffering in consequence.

A. That may be the present condition. I will assume it for the sake of argument, but I look forward to better results as a result of this Committee and the consequent legislation thereafter.

Q. Suppose it is raised to 16, do you expect public opinion to come up to it?

A. Vocal public opinion is already upto 16. I expect very good results. I look to moral results.

Dr. Beadon: Have you moved among the villages or is your experience limited to towns?

A. I have lived a good deal in villages. The first 15 years of my life were spent in villages. But now-a-days I have no occasion to study village conditions. My earlier impressions are however profound yet.

Q. Do you think that the villagers also are awake to the evils of child-marriage?

A. I have explained that fully in my statement. The masses are ignorant and uneducated and there is no strong opinion on this point. In no country in the world demand for social reform comes from the masses.

Mrs. Nehru: You said that the right of complaint should be given to the parents of the girls and the boy. Do you think if the right is given to certain societies recognised by the municipalities and district boards it will work?

A. I cannot support voluntary organizations to take cognizance of these offences. I do not believe in the voluntary organizations participating in matters which ought to belong to the parents or the State.

Q. Then you will have no objection if these societies are recognised by the local Government.

A. At present no such societies are officially recognised. Only labour societies are registered.

Q. But I thought you said that that was a matter which should belong to the State.

A. I shall be glad if you can give me an instance of any societies being registered besides the labour societies.

Q. Cannot new societies be formed and recognised?

A. I am opposed to multiplication of authorities.

Q. Just now you mentioned that it was a thing which concerned the State.

A. Yes, these are the two primary people immediately concerned. I do not bring in voluntary or aided societies. It will only lead to multiplication of authorities and trouble. The police is there which is a recognised limb of the State.

Q. Others can be created which can be recognised. Is it not?

A. But do not bring in voluntary irresponsible organizations. You can create Government organizations if you like. I am looking forward to the moral effect.

Q. Don't you think the moral effect would be more if it is voluntary?

A. I do not want the voluntary organizations to interfere in these matters. Seva Sadan or any orphanage for instance cannot be entrusted with this work.

Q. Is there any change that you think would be desirable in the procedure of these cases?

A. I want that a superior police authority should investigate. That authority should be the Inspector of Police.

Q. You mean on the complaint of the parents or the guardians police should take up the investigation.

A. Yes, responsible police, not the under police.

Q. At the same time don't you think that very few parents would come forward?

A. Public opinion is asserting itself. Public opinion is so asserting that if the parents would not go to the court the neighbours will make the report to the police. In a village if there is a criminal there is an intention on the part of the neighbours to treat him as a criminal. The neighbours will make a complaint.

Q. Do you consider that any reduction in the punishment is desirable?

A. I would not like to give any opinion on this subject. I only want that the punishment should be very deterrent.

Q. What would you call a deterrent punishment?

A. I would prefer a graduated punishment.

Q. Would you suggest any alternatives?

A. I would not like to suggest anything, because I am not conversant with the legal side of the question.

Q. What, do you think, is the cause of these cases not coming to light?

A. Because our laws are defective and only in recent years, say, during the last 2 or 3 years these questions have come prominently to the public notice, and the lack of public interest and the lack of clear conception of the duties of the people in these matters and lastly lack of authority on the part of village folks.

Q. You say our laws are defective. In what way are they defective?

A. They are not enforced properly.

Q. What would you suggest to make them properly enforced?

A. I am looking forward to the raising of the age of consent to 16 in marital and 18 in extra-marital cases.

Q. Do you think that merely the raising of the age will achieve the object?

A. This will bring about a new atmosphere altogether.

Q. Is nothing else necessary for facilitating the working of this act?

A. I should not like to multiply complexities in the present administration.

Mr. Mitra: There was some suggestion that in marital cases the offence should not be called "rape", but should be called by some other name. Do you think there is anything in it?

A. Rape is rape. I would not like any change.

Q. In answer to question No. 7 you say, Mohammedan religion prescribes that a girl should be married as soon as she attains puberty, and from the strict religious point of view marriages sooner than that are not looked upon with favour.

A. That is my impression. I am not a divine neither a Hindu nor a Muslim. That is certainly the impression left on me after my study of Muslim religion and theology. This is what I have heard from distinguished Muslim divines.

Q. You say, among the Hindus according to the Shastras the ideal age for the marriage of girls is 9 and even less and there are people found even now who defend early marriages on that ground.

A. I am thinking of Bengal then.

Q. But you know in practice there are very few girls who are married at 8, 9 or 10 now. The shastric injunction is observed more in its breach than in practice.

A. I am thinking of the time when the marriage used to be settled before the girl was born. They used to say that if a girl will be born she will be married to such and such boy. That was the state of affairs.

Q. You certainly don't think there is any practice in Bengal now where there are marriages between 9 and 10. You certainly know that in Vedic days early marriages were unknown. May I draw your attention to that line where it is said in Manu that where Smritis go against Vedas, the Vedas must be followed.

A. People do not take this injunction seriously. My own view is that we have to read the whole shastras in the new light and new conditions of life which have now come upon India. You have seen that in Far Eastern countries the old shastras are being thrown aside, and I am very anxious that we should do so. In practice we are doing it.

Q. You don't think there will be hue and cry if we pass marriage laws.

A. It will depend upon the kind of marriage laws, it will depend upon the kind of legislation that we are going to get. I am against passing any marriage law because it will be difficult to pass it. I see ahead of me difficulties which we cannot circumvent. The best form is to go by the age of consent.

Q. You say public opinion is against Sarda's bill. What are your grounds for that?

A. That is my impression. I am quite sure that my impressions will be borne out by the facts of the future. I am anxious to get Sarda's bill passed, but I am sure the Council of State will throw it out.

Q. Have you any special reason for that?

A. I was in the Council of State for two terms. I know the mentality of the distinguished men who sit there. It is no use really coercing orthodox opinion. That is the reason why I welcome the age of consent law. Here is a way by which we can attain the result without trying to coerce anybody.

Moulvi Muhammad Yakub: In answer to question No. 11 you have said, "I have met lady doctors who have given sad descriptions of child mothers coming into hospitals with all sorts of troubles." Do you think that the statements made by Miss Mayo in "Mother India" are correct?

A. I have not read Miss Mayo's book. I thought I knew more about India than Miss Mayo. I made it a point not reading the book. I have been connected with lady members in the organization of baby weeks.

Q. You said that the crime of abduction is more common with the Jats.

A. That is my experience.

Q. Is it not a fact that in some parts of the Punjab and Sindh there is a paucity of girls in some communities and therefore they abduct girls.

A. I can speak for Punjab absolutely, but I cannot speak for Sindh at all. In Punjab there is a paucity of girls among the hill tribes. In Kankra valley for instance there is a paucity of girls. In Bengal where abduction is common the girls are plentiful. Abduction is not due to the paucity of girls neither in rural Punjab nor in rural Bengal.

Q. What, do you think, is the reason for abduction being so common in certain parts of U. P. and Delhi? It is alleged that trade in girls is being carried on between Punjab and the U. P.

A. The whole position is that we tolerate this state of affairs.

Q. What do you mean by that?

A. We have not laid down that abduction is a heinous offence to be met by deterrent punishment. I know the conditions in England and in France where it is considered to be a very serious offence.

Q. In England it is not a criminal offence.

A. It would come in the papers and everybody would know about it. There are plenty of these offences in Delhi which go unnoticed.

Q. What is the reason?

A. Lack of public opinion and Government apathy in dealing with matters of this kind, and generally lack of moral appreciation that abduction is a very heinous offence.

Q. What machinery would you suggest to improve this state of affairs?

A. The machinery is in your hands, fix the age at 16 and 18.

Q. Will it do away with all these crimes?

A. It will give very good results immediately.

Q. What was the effect of the amendment of 1925?

A. It was not ineffective. You know the circumstances under which the Bill was passed. It was not welcomed by Government, it was not welcomed by all parties in the House. Somehow it passed. It has no dynamic energy and there it is languishing.

Q. Most of the witnesses have said that this amendment did not prove successful. Do you agree with this opinion?

A. No. Certainly not. It produced a great moral effect.

Q. In reply to Mr. Mitra you said that you have read some Muslim books and have heard from Muslim divines that a girl should be married as soon as she attains puberty. What books have you read?

A. I have not read any books. I have consulted some Moulvis.

Q. Which divines, which Moulvis did you consult?

A. I have consulted some. If I am within my right, may I ask you why don't you consult Angora and Afghanistan. Muslims in India have to go forward.

Q. Would you like a provision to the effect that if a girl over 18 years of age seduces a boy of less than 18 to intercourse with her she should also be punished?

A. She should certainly be punished.

Q. Would you like a provision to that effect in the law?

A. Yes.

Q. You say in the case of marital relations you would give the right of complaint only to the parents and guardians of the girls. But you know that such offences generally occur in small villages where the people are very illiterate. Do you think any parents or guardians or neighbours would be willing to take the case to the court when they do not consider it to be an offence to have early consummation. They have been educated to this habit of having early consummation.

A. Our villages are not going to be in a state of perpetual darkness. Public opinion in the villages in the Punjab is coming to the front and the sooner it asserts itself the better it is. Once public opinion is educated the cases will come to light.

Q. Has the number of marital cases within the last five years increased?

A. I cannot say.

Q. What is your authority for saying that public opinion in the Punjab is coming up?

A. Look at the number of schools, look at the number of girls who are being educated, look at the number of boys of school-going-age who go to different schools. All this shows that public opinion is asserting itself. I know about Punjab and Delhi. I have made a study of the position in Madras. Two years ago when the non-Brahmin Ministry was in power education progressed enormously. During the last 5 or 6 years there has been enormous progress. I am looking forward to the assertion of public opinion to bring these domestic crimes to the notice of the police.

Q. Would you suggest any machinery to strengthen this public opinion?

A. Machinery is education. You must give education to crystallise public opinion.

Q. You want free compulsory education.

A. Yes.

Mr. Bhargava: May I understand that you are in favour of this age of consent being raised despite any agitation on the part of Hindus or Mohammedans?

A. Absolutely.

Q. You think it stands on a different footing from social legislation regarding marriages.

A. It is the penal law of the land.

Q. I understand you personally are in favour of Sarda's bill, and all the provisions relating to the initiation of complaints and various safeguards against harassment, etc.

A. I am in favour of Sarda's bill as a means to an end. Public opinion must be crystallised. The bill is doomed to failure.

Q. Supposing Sarda's bill succeeds.

A. I do not desire to be so optimistic at all.

Q. In answer to question No. 7 you have said that Mohammedan religion prescribes that a girl should be married as soon as she attains puberty. Do you think there will be agitation on the part of Mohammedans?

A. I think they will object. If they do not want the law I will exclude them from the operation of this bill.

Q. Don't you think then that this bill will cease to be the law of the land?

A. In a way it is true and in a way it is untrue. It will have a great effect on the people of India.

Q. Do you not think that the present law also as it stands is against Mohammedan law?

A. If you say so I am prepared to accept it.

Q. I understand that you are not in favour of voluntary organizations being authorised to initiate prosecution and that like other cases when a report is made the police may investigate.

A. I want to follow the normal procedure for non-cognizable cases.

Q. Previous to the amendment of 1925 there were some provisions of law under which courts and public officers made complaints and were also entitled to sanction prosecutions on behalf of private people if they thought fit to do so. Now that sanction power has been deleted by the amendment of 1925, but even now courts are empowered to initiate proceedings in some cases. Do you not think that if a machinery is provided by virtue of which these neighbours or any other person may be enabled to move the District Magistrate or any other officer and he after making an enquiry to initiate proceedings, it will facilitate the work?

A. Well, I am not familiar with any law on the subject. I would leave the present law as it is.

Q. You were saying that it is the business of the State. With regard to that may I suggest that if the municipal committees and the district boards as regards rural areas are also recognised as official bodies for this purpose and this power is also secured to the sub-committees of the municipal boards and district boards that may be appointed by them for the purpose, you will be having another machinery which will be helpful in bringing cases to light?

A. It will lead to undesirable trouble between the police and these local institutions.

Q. These statutory committees will be nothing but complainants.

A. I would rather have one set of complainants.

Mr. Madaliyar : You suggest that the raising of the age from 12 to 13 was not ineffective. But at the same time your opinion is that the raising of the age was so small that it did not have any appreciable change and that is the season who there was no very great enthusiasm over it.

A. I entirely agree.

Q. If you raise the age to 16 it will be such an advanced step that people would think that there has really been some advance and there will be much more enthusiasm.

A. Quite so.

Q. Should I take it that you are against gradual legislation in a matter of this kind, but you would fix once for all the age at 16 which you think will protect us from the evils which we are complaining of?

A. I entirely agree. It would be a great mistake to try gradual and progressive legislation. It will mean a repetition of the whole trouble and controversy over and over again. And the recent experience in other countries has shown that people would soon take to such laws.

Q. May I take it that your view is that if the age is raised to 16 and the offence is made penal there will be a large amount of public opinion in favour of the measure and crimes will therefore be very rare; indeed that it is no use going out of the way to provide for any extraordinary procedure, extraordinary complainants and so on for detecting these crimes as the effect of the law itself would be to minimise these offences.

A. It is our experience. I believe more upon the moral effect.

Q. You have said that either the parents or the guardians might be the complainants. Do you use the word guardian in a technical sense or do you only mean any relation who is interested in the girl?

A. I meant guardian in the larger sense of the word. I had not any legal definition of the word in my mind.

Mr. Kanhaiya Lal : You said that the age of consent in marital cases should be 16. Would it be accepted by the people in Bengal?

A. I am quite sure that it will be accepted by the people in Bengal. Even the Brahmins will accept it.

Q. In non-marital cases you have suggested 18 as the age limit, but in your written statement you have suggested 16 years.

A. That is a mistake. That should be 18.

Q. You have suggested in answer to some of the questions that in the case of extra-marital relations the girl might be punished when she seduced the boy. Do you not think that if the girl is punished, the chances are that both the boy and the girl will collude and the offences will not come out?

A. That is a matter for the lawyer. But in my opinion if the girl is the primary offender she should be punished by law.

Q. In cases of corruption or bribery where both the bribe-giver and the bribe-taker are punished no cases come to light. In such cases no evidence will be forthcoming and we shall be defeating the very object we have in view, namely, punishing the aggressor.

A. On the other hand my experience is that we are having crops of cases of bribery and corruption. In Simla we have a large number of such cases.

Q. But here the girl is one of the most important witnesses and she is more or less the prosecutrix. Therefore if she knows that she will be punished her evidence will be no good and the case will have to stand on a slender basis. How would you prevent that?

A. Even if some cases fail, in my opinion, the moral effect of such a law would be immense.

Q. Would you make these marital cases compoundable?

A. That is a matter for the lawyer.

Q. You said that in the case of young mothers up to 15 years the children die in 50 per cent. of the cases? Where did you get the figure from?

A. That is Dr. Bentley's opinion. That relates to the whole of Bengal.

Written Statement, dated the 14th August 1928, of Mr. P. RAM-RICHPAL SINGH, SHARMA, M.A., LL.B., President, Sanatan Dharma Sabha, Rohtak.

1. That the state of law as at present embodied in Sections 375 and 376, Indian Penal Code, is defective, is admitted on all hands. It does not accord

with the progressive Social Spirit of the times. The educated community is dissatisfied with the present law.

2. An advance on the present law is absolutely necessary in view of our present physical deterioration and it is desirable in the best interests of Hindu Society that the consummation of marriage should not take place before the girl is sixteen in any case. Our ancient Dharma enjoined that a boy and a girl should not marry before the age of 24 and 18, respectively. The non-observance of this healthy injunction is chiefly responsible for our physical weakness.

3. The crime of rape is not frequent in Haryana (comprising of the Districts of Rohtak, Karnal, Gurgaon, Hissar and the adjoining territory of Jhind state) though cases now and then came up before court where rape is committed on girls of the tender age of 10, 11 or even less years. Seduction is of course rampant in the District and in some quarters it is a flourishing trade and traffic in abducted girls and women is very frequent.

The amendment of law made in 1925 raising the age of consent to 14 has not succeeded in preventing the improper seduction of girls for immoral purposes. At any rate there is no appreciable difference in the seduction of number of cases. I would therefore have no hesitation in agreeing with the amendments suggested by the measure proposed. Section 366-A of the Indian Penal Code provides an effective remedy for checking the improper seduction of girls and that section meets the requirements of the case quite effectively.

4. The amendment of 1925 raising the age of consent without the marital state to 13 years has had no effect whatsoever in this part of the country. During my 12 years' practice at the Bar, I have not come across a single case of rape within the marital state not have I heard of any such case from other Senior members of the Bar. I do not mean to convey that there has been no cohabitation by a husband with his wife of the age of 12 or 13, but no such case came before any criminal court. Notions of family honour and social relations and ignorance of our women folk may be responsible for it though I have heard of some girls becoming mothers at the tender age of twelve.

(a) As I said before the law has had no effect on (a) the consummation of marriage or (b) by stimulating public opinion in that direction or (c) by putting of marriage beyond 13, as the marriages of girls generally take place at the age of 13 or 14 years. I would however suggest that marriages below 14 or 18, respectively, should be penalised.

5. The usual age at which girls attain puberty in Haryana is 16 years. The girls living in villages attain it a bit earlier as they enjoy fresh air in the open and help their family in agricultural pursuits. There is not much material difference on this point in different communities, castes or classes.

6. Cohabitation is very common in Haryana amongst all classes before the girl attains the age of puberty, viz., 16 years. It is not common before the girl completes 13 years or after the age of 16 though such cases are not wanting. That is, however, very rare. No such cases came to court.

7. The practice of this early consummation of marriage is not due to any religious injunction though there is some vague consciousness in the minds of the people especially women folk that a girl is fit for consummation of marriage after her first menstrual course which takes place at the age of 12 or 13 and the Shastras enjoin that the father is doomed to perdition if his daughter has the menstrual course at his house. This text seems to be an interpolation of Muslim times, it is contradictory to the precepts of Manu Simirti and Ayurvedic texts. The upholders of child marriage seek shelter in this text.

षष्ठवर्षा भवेद्गौरी नव वर्षा तु रोहिणी ।

दशवर्षा भवेत्कन्या ततश्चर्ध्वं रजस्वला ॥

8. The "Gaona" ceremony is usually performed in our part of the country. The consummation of marriage takes place generally on the first

night when the girl goes to her husband's house after the "Gaona Ceremony" and the consummation of marriage takes place before the girl attains the age of sixteen which is the age of puberty.

9. The attainment of puberty—the age of 16 years is in my opinion a sufficient indication of physical maturity to justify consummation of marriage. In our part of the country, physical development of the girl at the age of 16 is adequate to justify consummation without injury to her health or that of her progeny.

10. I am not conversant with conditions obtaining in other parts of the country such as Bombay or Madras but in our part of the country a girl at the age of 18 would be competent to give an intelligent consent to cohabitation with a due realisation of consequences.

11. I have come across of a case in rape on the Chamar girl of about eleven years when the medical expert, the Civil Surgeon of the District, was of opinion that the girl was incapacitated to give birth to any child on account of injury to the vagina and the womb. The higher rate of infantile mortality and the weak condition of the children is largely due to cohabitation with wives before the age of puberty.

12. Early consummation and early maternity is responsible for high maternal and infantile mortality. Children begotten of such consummation are weaklings and die at an early age. Intellectual development is dwarfed. However, there is one curious phenomenon which deserves notice. In the case of early consummation of marriage which is practised among Banyas, the number of children produced is very large though their growth is stunted.

13. There has been some development in public opinion in favour of the extension of age of consent but that is chiefly confined to educated classes.

14. Illiteracy is very common in the females of this part of the country and they, therefore, favour early consummation of marriage for their children. According to the old notions, prevailing, and brought up amidst old traditions, they are anxious that they should have grand-children before Fates Snap as under the thread of life.

15. No difficulty has been experienced in determining the age of girls in connection with offences under Sections 375 and 376. The medical expert generally has the last word on the subject and no other way out of the difficulty is possible. According to medical jurisprudence, it is very difficult to ascertain exactly the age of a person and generally the estimate of age made by the Doctor is correct, humanly speaking. If the birth certificate of the girl is also produced together with other evidence, it eliminates some other chances of uncertainty.

16. If the age of consent is raised to sixteen or more in the case of non-marital offences, the margin of error will certainly be reduced but not in the case of marital offences as the difference between 13 and 14 is imperceptible to a layman.

17. I would place extra-marital and marital offences into two distinct and separate categories—non-marital to be punished with a sentence prescribed in 376, Indian Penal Code, and marital to be punished with the sentence of simple imprisonment of one year or fine or both.

18. A difference of procedure in trials for offences within and without the marital state is desirable. In the first case, summons should be issued in the first instance and the offence should be bailable. If possible, the trial of such an offence within the marital state should not be public. It should of course be non-compoundable.

19. Constituted as Indian Society at present is, it is very difficult if not impossible to prevent the collusion of wife with her husband in any marital offence but improper prosecution or extortion must be guarded against. In the case of an offence within a marital state, investigation should be made by a Police Officer not below the rank of Deputy Superintendent of Police and the police should not take cognisance of such a case except on the report of the wife.

20. The legislation fixing the minimum age of marriage to be 14 would be a more effective method of preventing cohabitation with a girl who has not

attained the age of 14. The fixing of the minimum age would be in consonance with public opinion in our part of the country.

21. As a matter of fact both are necessary to secure the object in view. Education is not as rapidly extending as it should be and Social propaganda does not count among the masses. Our reformers have been crying for social legislation on these and kindred points and the Government has been practically indifferent. Such important reforms in the present state of the country seem to be impossible of execution without social legislation which will have a sanction behind it and the best minds of the country have been in favour of such legislation.

Oral Evidence of Mr. RAMRICHPAL SINGH SHARMA, President, Sanatan Dharma Sabha and Hindu Sabha, Rohtak, and Member of the Sanatan Dharma Prithinidhi Sabha of Delhi Province, Rohtak.

(Delhi, 10th October 1928.)

Chairman : You are the President of the Sanatan Dharma Sabha and the Hindu Sabha, Rohtak.

A. Yes.

Q. How long have you been practising at the Bar?

A. For the last 12 years.

Q. In your answer to Question No. 2, you are referring to some Shastric injunction laying down that the age of the boy and the girl at the time of marriage should be 24 and 18, respectively. Can you give us the authority?

A. I cannot quote chapter and verse. But it is given in Shushrut that the marriageable age should be 24 and 16 for boys and girls, respectively.

Q. You are speaking for Haryana which comprises the districts of Rohtak, Karnal, Gurgaon, Hissar and the adjoining territory of Jhind State?

A. Yes.

Q. In your answer to Question No. 5, you say the usual age at which girls attain puberty in Haryana is 16 years. The girls living in villages attain it a bit earlier than the girls in towns. Is that really so?

A. The difference is only of one year or so. It is but natural that girls in the villages who live in fresh air and work in fields with their parents should attain puberty a bit earlier.

Q. We are told in other places girls in towns on account of surroundings and sentimental things which excite their passions and on account of the rich food they take and on account of their being better fed, they attain puberty earlier and in villages as they are poorly fed and there are much less sentimental things they attain puberty later. You think, it is the other way.

A. Yes.

Q. In answer to Question No. 6 you say cohabitation is very common in Haryana amongst all classes before the girl attains the age of puberty. What is generally the age of puberty?

A. Sixteen years.

Q. Consummation takes place after 16.

A. It takes place generally at 14 or 15. Girls are generally married at 13 or 14 and within a year the Gaona takes place. Consummation follows immediately after marriage.

Q. What is the percentage of cases in which consummation takes place before puberty?

A. I would put it at 90 per cent.

Q. If that is so do you find any influence of that on the people?

A. The people are energyless.

Q. Do girls also suffer?

A. They do.

Q. Is that within your personal experience?

A. There have been many cases of early consummation in cities.

Q. Do you think the age of consent law as amended in 1925, is not put into practice?

A. There is a breach of the law but no such cases are reported.

Q. But you say marriages take place between 13 and 14. There is no reason to believe that consummation takes place before 13. Is it not?

A. In some cases, marriages do take place early and consummation takes place before 13. But these cases are they few.

Q. What is the kind of population is Haryana?

A. There are Jats, Gour Brahmins, Rajputs, Muslim Rajputs and there are Bhargavas too. But a large number of them are Jats and Ahirs.

Q. What proportion do you think they would form?

A. In the Rohtak district, about 33 per cent. are Jats, about 33 per cent. are Ahirs, 10 per cent. are Gour Brahmins and the Muslims are about 20 to 25 per cent.

Q. Is this evil that you talk of only among the Hindus and not among the Muslims?

A. Yes, not among the Muslims.

Dr. Beadon : Is that case that you mention in answer to Question No. 11, a marital case?

A. It was an extra-marital case.

Q. Have you met any marital cases?

A. None has come to court.

Q. Have you had any cases in your personal knowledge, say among your friends?

A. None.

Q. You say early consummation is responsible for high infant mortality and the weak condition of the children. Have you seen any cases among your friends or neighbours in which the children or the girl mothers have died?

A. I cannot cite any cases within my personal knowledge. But that is the general condition.

Mr. Mitra : What is the general age of marriage in your part of the country?

A. The age at which girls are generally married ranges from 12 to 14.

Q. You say that there is a notion in the minds of the people that a girl should be married before the first monthly course occurs. They quote that *shloke* 'Asht Barsha Bhavat Gouri' and so on. You also say that marriage takes place at 13 or 14. This injunction is therefore observed more in its breach.

A. Yes.

Q. If the age of marriage is fixed at 14 there would be no opposition.

A. No. They will say 'the law wants us to do so.'

Q. What age of consent would you fix in extra-marital cases?

A. 18.

Q. There has been a suggestion that in marital cases where consummation is not attended with actual physical injury or violence the punishment may be a small fine. Do you approve of it? It is said that the people would be encouraged to bring the cases forward, because in the case of imprisonment the relationship between the husband and the wife is broken and cases are not brought to light.

A. Yes. I think that will be an improvement.

Moulvi Muhammad Yakub : Has your Sanatan Dharma Sabha or any other society taken any step to educate the illiterate people about this law?

A. No.

Q. You have said that seduction is very common in your part of the country. Is seduction also followed by rape?

A. In seduction the girls are generally sold to the highest bidder. It appears that there is dearth of girls in some communities and some people abduct girls of low classes and say that they belong to higher classes and give them in marriage. There may be rape after the girl is married.

Q. How can there be rape after marriage?

A. If her consent is obtained by fraud.

Q. What effect will the raising of the age to 18 have in these seduction cases? If the people want girls for being married they will seduce girls of any age, 18 or 20. This law will have no effect. Is it not?

A. You can prevent them in other ways then.

Q. What other remedy would you suggest for stopping this trade in women?

A. It should be made the duty of the Patwari, Lambardar, and the Chowkidar of the village that they should report all such cases to the police who should report the matter to the district authorities as under Sections 44 and 45 of the Criminal Procedure Code.

Q. Can you give us any reason why the amendment of 1925 did not succeed?

A. As a matter of fact people did not know the law either in the towns or in the villages. Then the margin between 12 and 13 is so very small that it is almost next to impossible to expect any appreciable results.

Q. Do you think if the margin were greater, the effect would be more appreciable?

A. The difficulty can only be removed by fixing the age of marriage. If you do not fix the age of marriage but raise the age of consent you put the girl in a very awkward position. She will not have sufficient opportunity to respond to the affections of the husband. Moreover she cannot have the discriminating intelligence of disarming the husband of his passions. The age of marriage must be fixed at par with the age of consent. That is the only effective remedy.

Q. In answer to Question No. 18 why do you think that there should be a difference in the procedure of trials of marital and extra-marital cases?

A. In marital cases the honour of the family is concerned, the question of social prestige comes in. In marital cases it does not, to a certain extent, involve moral turpitude. And therefore I have suggested that the trial should be conducted in camera, and instead of warrant summons should be issued in the first instance.

Q. Do you think that social reform will have more effect than legislation in stopping early marriages?

A. I think legislation is absolutely necessary.

Mr. Bhargava : Do you think that the apathy of the Government has been very great?

A. It has been almost criminal.

Q. Do you think that Government should also help in social propaganda?

A. Surely.

Q. You were saying that the Lambardars, the Chowkidars and the Patwaris should be made responsible for reporting any breaches of the law. Would you also like that if information is given they should be given some reward just as in gambling cases?

A. Yes.

Q. Would you also prefer that the health officer of the district should be charged with the duty of propagating social work by giving cinema shows, by delivering lectures and in other ways?

A. Yes.

Q. You are of the opinion that the age in the case of extra-marital cases should be fixed at 18. Do you think that it will have the effect of preventing some cases of seduction also?

A. It will.

Q. Do you not think that when the age under Section 306-A has been fixed at 18 the age for rape should also be fixed at 18?

A. Yes.

Q. Will it, in your opinion, promote matrimony also? Do you think there will be more marriages of girls of 16 and over?

A. I think so.

Q. In answer to Question No. 9, you say, the attainment of puberty, i.e., the age of 16 years is a sufficient indication of physical maturity to justify consummation of marriage. By puberty do you mean majority?

A. Yes.

Q. You mean that a girl begins to menstruate at the age of 12 or 13 but she attains majority at 16.

A. Yes.

Q. When you say consummation takes place before puberty do you mean that it takes place after 13 but before 16?

A. Yes.

Q. Is Gaona ceremony in vogue now?

A. Yes, in every district there is Gaona ceremony.

Q. How long after marriages does the ceremony take place?

A. In some cases it is five years and in others it is one year. If the husband is grown up it is one year, if he is not fully grown up it is delayed.

Q. You say in villages puberty is attained at a smaller age than in cities. What is your warrant for this opinion?

A. My own experience.

Q. You have not consulted anybody in regard to this.

A. No.

Q. Have you not come across many cases in the rural areas among Muhammadans where there is child marriage just as in Hindus?

A. I have just heard of it.

Q. In answer to Question No. 17, you have said, extra-marital offences should be punished with a sentence prescribed in Section 375, Indian Penal Code, and marital offences should be punished with the sentence of simple imprisonment of one year or fine or both. I understand you want to restrict this to simple imprisonment of one year and fine in case of boys between 16 and 18?

A. Yes.

Q. In proper cases where the man is grown up you will award greater punishment?

A. Yes.

Q. What do you mean by trial in camera?

A. Trial in which the public are excluded.

Q. Don't you think that these powers are secured to the court even now? In political cases the trials are held in some sort of camera under Section 344.

A. Section 344 is sufficient.

Q. You say that in marital cases, the Deputy Superintendent of Police only should make investigation. Don't you think even this interference will be resented by the people in general?

A. Of course, it will be preferable to keep the offence non-cognizable. But if it is to be made cognizable it should be investigated by the Deputy Superintendent of Police only.

Q. Even if this is the law don't you think that the number of cases that would come to court would be very small so far as marital cases are concerned?

A. Yes.

Q. You think even when social propaganda is going on and the law is enacted the people would be apathetic in bringing such cases.

A. Yes.

Q. Would you give the right of complaint to social reform societies then?

A. No. I would restrict it to the parents and guardians of the girl concerned.

Q. Do you think there are any social reform societies in the rural areas to which the power of complaint could be safely granted?

A. There is none.

Q. In big cities also do you think that in the case of the Arya Samaj, the Sanatan Dharma Sabha or the Hindu Sabha these powers will be liable to be abused?

A. They will be.

Q. You would restrict them to the parents or guardians of the girl concerned?

A. Yes.

Q. Any other organisation?

A. To social reform societies.

Q. Do you think that there will be any social reform societies in rural areas to which power can be safely given?

A. None to my knowledge.

Q. In big cities also so far as Arya Samaj, Sanatan Dharm, etc., are concerned do you not think that in some cases this power will be liable to abuse? Are you in favour of giving this power to societies which are officially recognised, statutory bodies of the municipal committee or district board?

A. No, I am afraid not.

Q. Are there any organisations in existence to whom these powers can be safely entrusted?

A. No.

Q. Do you think, before another 10 years, there is any likelihood of a good number of these associations coming into existence?

A. Not likely.

Q. Would you like caste panchayats?

A. Yes.

Q. Do these panchayats exist in all villages?

A. No, but these can be brought into being.

Q. Supposing the power of the grant of sanction is invested with the District Magistrate and all cases are brought to his notice and after going through those cases or holding such enquiry as he deems fit grants sanction or initiates prosecution himself in the proper case. Would you like that idea?

A. There is no harm in it.

Q. What about birth registration in Haryana? Do you think it is satisfactory?

A. No, it is absolutely imperfect.

Q. In municipal towns is it fairly satisfactory?

A. Not as it should be.

Q. If there is an obligation on the parents to report the birth of their children, will that work?

A. Yes.

Q. In rural areas there is no such obligation?

A. No. I remember of a story which a friend told me. The chowkidar used to report the name and every time he used to give the name of Muhammad and when he was asked he said that he knows only one name.

Q. So you think the present system is unsatisfactory.

A. Yes.

Q. What do you suggest whether the obligation to report births may be placed on the village officials or on the parents of the child?

A. On both.

Q. And in case of non-compliance it may be penal?

A. Yes, because unless the name of the girl or boy is reported it is no good.

Q. In Karachi, it was brought to the notice of this Committee that there is a column in the register of births showing whether the child has been vaccinated. After a boy or girl is vaccinated it is entered in the birth register and there is a corresponding entry in the register of vaccination and after that entry is made it is very easy to know the name of the child who was vaccinated and the records would show that that name is the register of vaccination is exactly the child which is referred to in the birth register. Do you approve of that?

A. Yes.

Mr. Mudaliyar: You say that you want a different procedure in the case of trial of marital and extra-marital cases. That I take it is on the ground that it would be a shame on the family. Do not think it will be less shameful if a girl of a respectable family is raped by a stranger?

A. It would be more shameful.

Q. Would you not advocate in extra-marital cases the same trial, i.e., in camera?

A. In that case the moral turpitude of the offender is very great. There is another consideration. The punishment should be deterrent and the people should be made to know that such a crime is severely punished.

Q. Why do you think that moral turpitude is less in the case of husband? Is it not an offence against the health of a girl or as a woman?

A. Yes.

Q. It has nothing to do with relationship as wife?

A. No.

Q. Then why do you think that moral turpitude is less?

A. In one case the offence is a technical one and in fact there is very little of moral turpitude which would not be justified. It is an offence but in the case of a husband it is less moral turpitude than in the case of a stranger.

Q. If you fix the age below 12 would there be less moral turpitude?

A. No.

Q. Would you say that the moral turpitude is greater in the case of a girl of about 17 and upwards consenting to intercourse with a stranger and the offence still being a rape because the age of consent is raised to 18, than a girl of 11 having sexual intercourse with her husband?

A. I still think that in the case of non-marital offence it carries more moral turpitude. That is public opinion.

Q. Therefore Government cannot so much be blamed if that is the state of public opinion?

A. But Government is to be blamed to that extent that it would not educate the people and if any legislation is brought forward the Government would be either indifferent or oppose it.

Q. With regard to offence you suggest that lesser punishment should be given to the husband because it is in the interest of the girl. Don't you

realise that this act⁸ is made an offence not in the interest of each individual girl but in the interest of the girl as a class?

A. Yes.

Q. Deterrent punishment to the husband may no doubt injure a particular wife but it will have this healthy effect that the whole class of girls will be protected because of this deterrent punishment?

A. Yes.

Q. From that point of view do you think it is wise to lessen the punishment to mere fine in the case of husbands?

A. You might put it like that but it would be much better to have a sliding scale.

Q. Would you prescribe sliding scale by enactment or leave it to the discretion of the magistrate?

A. I would leave it to the discretion of the magistrate.

Q. Therefore the punishment would be the same as it is now?

A. Yes.

Q. Why do you say that the offence should be non-compoundable? Supposing the offence is made compoundable with the sanction of the trying magistrate would you have any serious objection to it?

A. You should fix 16 years in married cases.

Q. Supposing a girl is 15½ and there is cohabitation with the husband. The girl is fully developed and there is no injury but still a technical offence has been committed. Would you in that case leave it to the judge whatever he may think or would you like that he should allow compounding of this offence?

A. The difficulty in the case of offence being made compoundable is that in every case the wife will be prevailed upon by the husband.

Q. But there is the magistrate who is to see that justice is done?

A. Why should we leave a loophole?

Mr. Kanhaiya Lal: You are in favour of marriage legislation?

A. Yes.

Q. You are also in favour of penal legislation fixing the age of consent?

A. Yes.

Q. Would you have varying ages for both?

A. The same age, 16 for marriage and 16 for consent.

Q. If the legislature fixes the age for marriage at 14 then would you fix the age of consummation at 16 all the same?

A. Yes.

Q. Supposing the marriage legislation falls through then would you recommend fixing the age of consent at 16?

A. Yes.

Q. If a husband goes to his wife is there any morality in it?

A. No.

Q. There is no moral turpitude?

A. No.

Q. If the girl is immature it is only a question of public policy and not of moral turpitude?

A. Yes.

Q. If the age of marriage is fixed by legislation would you be in favour of having a system of registration of marriages just as we have a system of reports of births and deaths so that we may be able to maintain a register in a suitable office giving names of the marrying parties, their ages, etc., for future use?

A. I have no objection.

Q. You think it will be helpful in the trial of cases that might occur afterwards?

A. Yes.

Q. On whom would you place the obligation to make the report?

A. On both parties.

Q. To whom should be given the duty of maintaining this register—to the Tahsildar or Deputy Commissioner or village patwari or lumbardar?

A. District boards or municipalities.

Mrs. Brij Lal Nehru : In the case of marital offences if you place the obligation on the parents of the girl or the parents of the boy do you think it will work?

A. It would be impracticable if the boy is below 18.

Q. If the boy is below 18 the parents or guardians should be made responsible and will be required to execute a bond to keep the couple separate and if the boy is over 18 the boy himself is responsible. The parents will be held responsible if the bond is broken. Have you any objection to that?

A. I shall have no objection to that.

Written Statements of persons not orally examined.

Written Statement of Khan Bahadur MIAN ABDUL AZIZ, Deputy Commissioner, Hissar.

In reply to your letter No. 42 A. C. C. of 18th July 1928, I have the honour to state that I find it difficult to answer some of the queries in your questionnaire, but I do wish to urge the following points:—

1. There certainly is some dissatisfaction with the state of the law as to the Age of Consent as it exists now, but this discontent is confined mainly to the progressive section of the urban population. There is no dissatisfaction, whatsoever, in the rural section of the population. Your committee should I think disregard the question of dissatisfaction altogether. It is tragic that dissatisfaction should not exist with the state of the law and if there is any reason for introducing a higher limit of age for purposes of consent it is this that the people are so steeped in apathy towards this most important subject that they have to be taught to be discontented before they can realise the social degradation which results from early consummation of marriages.

2. The circumstances that justify an advance on the present law are as under:—

(a) *Economic*.—Early marriages (whether legal or otherwise) hinder education, cripple the earning capacity of families and dissipate what little earning there is on avoidable ceremonies.

(b) *Political*.—It is high time now that women should take part in the political life of India and if marriages take place at the absurdly early age now prevailing over the greater portion of India it is obvious that most women will be debarred from an effective exercise of their political rights.

7. The practice of the early consummation of marriage is mainly due to traditional modes of life and only remotely due to direct religious injunctions. The beliefs of the people in a case like this should not be considered at all. Beliefs whether dignified with the name of religion or whether the outcome of gross superstition should be considered in an important matter like this as absolutely irrelevant. It is urged that even if there is medical evidence in support of the view that consummation of marriage after the age of 14 results in no physical injury the medical view should be disregarded in the interests of the social and political advancement of India. Neither creeds nor any kind of mawkish sentimentality should be allowed to interfere with the obvious duty of protecting women from bearing children at an age when they should be qualifying themselves for taking an intelligent part in social and political activities. Gross and open immorality is to be preferred if the welfare of India has any meaning to early marriages that result in crippling the life both of the parents and of the offspring.

13. It cannot be emphasised too strongly that in this particular case it will be suicidal to defer legislation till public opinion is sufficiently educated to realise the harmful effects of early consummation and early maternity. The legislators of the country in this case should have the courage to assume that ultimately public opinion that is worthy of that name is sure to be in favour of an extension of the Age of Consent in marital and extra-marital cases.

(2) In view of what is said above it is clear that I am strongly in favour of the view that marriages below 18 for girls and below 20 for boys should be penalised altogether and that sexual intercourse below those ages should also be penalised by the Criminal Law of the land and this opinion is

entirely independent of what Mr. Sarda or Sir Hari Singh Gour may have proposed by way of amending existing legislation. It is undoubtedly correct that the enforcement of such a law would create considerable resentment and would also be beset with difficulties but that resentment has to be faced and those difficulties must be overcome if any regard is to be had to well-being of India's youth.

(3) It is regretted that on account of my official preoccupations I am not in a position to volunteer for oral evidence.

Written Statement, dated the 27th July 1928, of Diwan Bahadur Raja NARENDRA NATH, M.A., M.L.C., Srinagar, Kashmir.

There is a general demand for social reforms and the opposition is in this case as in many others even in the sphere of politics a mere pose. It is not genuine. It is fashionable to assume an attitude of opposition as it brings to the front some persons who seek notoriety.

The laws legalising widow remarriage and succession to property by inheritance in spite of change of religion were passed in the teeth of opposition by the public. But the present generation looks upon both these changes in the law as salutary.

9. Attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. The most suitable age for consummation without injury to health of the person or of the progeny would be 18, but in no case should consummation be allowed below 16.

10. At the age of 18.

12. Early consummation must in accordance with the laws of nature be considered to a great extent the cause of maternal and infantile mortality and must prejudicially affect the intellectual and physical growth of the people. Such physical and intellectual development as we find amongst Indians, is in spite of the frequent breaches of the laws of nature which society permits. If strict conformity with the laws of nature were enforced, there would be further development of intellectual and physical power.

14. No.

15. I think it would be necessary to improve the register of births by adding a column for the names of children to be reported when names are given.

17. Yes, I approve of the maximum punishment prescribed for marital or extra-marital offences prescribed by the new law.

18. No.

20—21. The two kinds of legislations would help each other. Law raising the minimum age of marriage would be more readily welcome if the age of consent for rape were raised. Reforms would never be introduced if we were to wait for their universal acceptance. All that we have to see is that the change is not of such a radical nature as to give rise to acute discontent showing itself in outbursts of violence. As far as I have been able to gauge public opinion in the Punjab none but die-hards or persons who want to dissent for the sake of dissent are opposed to the change.

I am staying at Srinagar while I am writing these answers. People here are very conservative and educationally backward as compared with the people of the British territory. The minimum age of marriage here has been recently raised to 14 in the case of girls and 18 in the case of boys. Marriages of men above 50 to girls below 14 have also been penalised. Considering the backwardness of the country this is a step towards radical social reform, yet everyone to whom I have spoken is satisfied with the law.

Written Statement, dated the 28th July 1928, of the Hon'ble Mr. FEROZE KHAN NOON, Minister, Punjab Government.

1. Not in the Punjab.
2. There is not much trouble in the Punjab about this.
3. There are many cases of abduction but these are generally of grown-up girls or married women.
4. It is certainly a move in the right direction. 14 years should be the limit instead of 13.
5. 16 years. Should make no difference on account of caste.
6. Not common in the Punjab.
7. It is usually due to belief that it prevents boys and girls from going wrong or marry against their parents' wishes and moreover women are rare. The sooner they are captured the better.
9. No harm in consummation at 15 or 16.
10. 16 years.
11. No.
12. Early marriages are common in cities and specially among Hindus in the Punjab and that may be partly responsible for the poor physique of some of them.
13. Not much agitation in the Punjab over this subject.
14. Some of them foolishly do.
15. When births are registered the name of the child must always be entered in the register and not merely a statement "born a boy or girl".
16. Would make no difference practically.
17. Not more than six months for marital offences.
19. Prosecution should not be lodged in marital cases without District Magistrate's order in writing.
20. Fix 14 as the minimum age for marriage.
21. Penal law.

Written Statement, dated the 3rd August 1928, of Rai Bahadur LALA BRIJ LALL PURI, Advocate, President, Municipal Committee, Sargodha.

1. There is undoubtedly a good deal of dissatisfaction with the state of law as to the age of consent as contained in sections 375 and 376, Indian Penal Code.
2. In my opinion there is need for an advance on the present Law as under the existing Law the age of consent fixed by statute is not sufficiently high and has not only affected the health of the girls but has a deteriorating effect on the offspring. Crimes are not frequent in this part of the country amongst Hindus. Crimes are frequent amongst rural Muhammadans of grown-up ages.
- 3—4. The amendment of 1925 has undoubtedly been to some extent effective in protecting girls against cohabitations with husbands within the prescribed age limit by sub-clauses (2) and (3) of the question No. 4. Once a marriage is performed, speaking generally there is no prohibition against consummation.
5. Age of puberty is between 12 and 13. It does differ in different communities, girls of rich families attain puberty earlier.
6. Seldom before puberty or before 13. Such cases have not come to Court here.
7. In Punjab, generally there is nothing like religious injunction with regard to consummation of marriage. It may be in books but in my very

long and large experience as a lawyer and one mixing with the masses, I have never heard of a thing like that.

8. Gaona, as a ceremony, has practically lost its force in the greater part of the Punjab. Wherever it does exist, it has nothing to do with the question of puberty. Generally now-a-days in well-to-do families girls are given in marriage when they attain the age of 14 to 18 and in some cases even after that and soon after the marriage the girl is sent to the house of her husband. If some orthodox people marry their girls before 12 and send the girls to the house of the husband, it is not the idea that consummation will take place necessarily.

9. Not necessary. I should think at least two years must elapse after puberty to allow consummation.

10. 15 and in no case below 14.

11. I know of no such case.

12. I do consider early consummation and early maternity responsible for the evils.

13. There is good deal of public opinion for an extension of age of consent, specially amongst educated classes.

14. Yes, but the opinions are changing.

15. Yes, there are difficulties. Girls and their parents do not like the idea of being examined medically. But I think with the increase in the number of female doctors the difficulties ought to disappear.

16. To some extent.

17. Yes, the punishment to remain as before.

18. I would retain the old law, District Magistrates trying offences within the marital state.

19. The existing law is sufficient.

20. I would prefer penal legislation. Public opinion has not so far been able to check the evil.

21. Penal.

Written Statement, dated the 4th August 1928, of Mrs. LILIAN A. UNDERHILL (formerly Mrs. LILIAN A. STARR, Medical Missionary, Peshawar), No. 6 Bungalow, Jhelum, Punjab.

I thank you for your letter of 23rd July 1928, containing a copy of the questionnaire with regard to the law of 'Age of Consent'.

I enclose my views in written form, and I agree to be orally examined if so required by the Committee, though I am not now actually engaged in my former hospital work.

In my replies, I am only answering such questions of the subject of which I have had some experience in my work in this country.

Answers to questionnaire.

2. In my opinion there should be an advance on the present law since girls at 13 or 14 are not sufficiently developed physically or mentally.

5. Girls attain puberty usually at 10, in Kashmir and Northern India, but amongst the hill tribes of trans-frontier territory such as Afridis and other Pathans, the age is more often twelve or thirteen. Even when 10 is the usual age of puberty, the development in size and physique varies a great deal in different communities, Muhammadan girls being in advance of Hindus owing to the freer life that they lead.

6. Unfortunately cohabitation does occur before puberty and is not uncommon any time after puberty and before marriage. Some of these cases have lately come to notice in Kashmir.

Last year (1927) the Maharajah of this State was approached to raise the marriage age for girls to 14. It had previously been raised from 10 to 12, then to 13. He raised it to 14, with the result that cases have come up where the girls aged 13, when the time for marriage approached, were found to have been injured by the men of their own households, and in some cases were already venereally infected.

A number of Muhammadans this year presented a petition asking His Highness to reduce the age for girls to 12, as they felt they could not otherwise be responsible to keep their girls till marriage.

Though this seems to suggest the necessity to lower the marriage age, the Kashmir Women's Welfare Association and others feel strongly that the age of 14 should be maintained or advanced to 16; and that though at first many cases may occur where the law is broken, they feel such should be strictly punished and thus they hope that the rules ordained by the law will in time become the custom.

7. I believe it is due to custom, supposed to result from religious injunction in the case of Hindus, but for which in reality there is no foundation.

9. In Kashmir, with which I have been closely connected for some years, marriage till recently has usually been consummated at puberty, and the result is that many girls aged 11 or 12 are brought in labour to our hospitals. They are often in *extremis*, and quite unable to bear living children without the skilled operation of *cæsarean* section. Undoubtedly many do not reach us and die in labour. This, I consider, proves strongly that attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. Although at 10 puberty makes pregnancy possible, the female pelvis is not sufficiently grown to allow of the passage at birth of the child.

At adolescence the mental stability of the average girl is not sufficiently balanced, and neither is the desire for nor the responsibility of motherhood sufficiently developed. Though physically able to be a mother at 11, she is not a woman till the age of 16. Therefore marriage should not be consummated till at least five years after puberty.

10. I do not think a girl, even in India, can give intelligent consent before 16.

11. During my experience, I have come across some cases where cohabitation after puberty but before full physical development has resulted in:—

- (a) mental derangement or hysteria to the girl,
- (b) when pregnancy has resulted, the mother, though she lives through her labour, is so physically injured for life, that any subsequent labours are made dangerous and difficult,
- (c) the mother develops osteomalacia, due to lack of light and air during girlhood and early married years,
- (d) infant mortality. I have found that out of an average of eight children a woman has sometimes lost six, the great infant mortality being due to the facts that:—
 - (i) the mother was not physically able to bear the children alive,
 - (ii) that she was too young and ignorant to care for them when born, (iii) that her children, though they may live, are puny and unable to resist infection and disease.

12. Yes, child-marriage and child-motherhood are, I believe, at the root of the high maternal and infantile mortality of India.

17—18. I would make no difference between the punishment given for marital or extra-marital offences, my reason being that the evil results are the same to the girl in either case.

21. But there is a desire for education, and the great necessity of the present day is education of the girls in housewifery and mother-craft. This is best spread through schools and welfare centres, for which reason, I think a true education is more effectual and more powerful than the penal law alone.

The above statements are made from cases observed at several hospitals in Kashmir and Northern India; details can be obtained or verified, if required.

Written Statement, dated the 6th August 1928, of Dr. BIHARI LAL DHINGRA, C.I.E., Villa Nova, Simla, W.

1. The age of consent contained in sections 375 and 376 of the Indian Penal Code is not regarded as sufficient to ensure safety of immature girls.

2. The circumstances that justify the making of an advance on the present law are that intercourse with immature girls is a potent cause of physical degeneration in India generally.

3. The crimes of seduction are almost as frequent in this part of the country as elsewhere. The amendment of 1925 has not succeeded in preventing or reducing cases outside the marital state or the improper seduction of girls for immoral purposes. I would strongly recommend the raising of the age of consent under sections 375 and 376, I. P. C., as well as penalising marriages before the age of 16 in the case of girls and 18 in the case of boys. For extra-marital relationship, I would raise the age to at least 17.

4. The matter of cohabitation by a husband with his wife under the age of 13 is such that it very seldom, if ever, comes to light. The change has practically had no effect in cases mentioned in sub-clauses (1) to (3).

5. Girls in this part of India generally attain puberty between the ages of 12 and 14. It does not appreciably differ in different castes, communities or classes of society. I have used the word "puberty" here as the time when menstruation sets in. It does not mean maturity. A girl who starts menstruating at 12½ or 13 can be no more considered fit to conceive and bear a healthy child than a child of one year who has cut a few teeth can be considered fit to take ordinary adult food without detriment to his or her system.

6. Cohabitation soon after puberty is prevalent, though not common, in this part of the country. No cases of this kind come to Law Courts.

7. I do not attribute the practice of early consummation of marriages to religious injunctions. It is partly due to ignorance in regard to the baneful effect of such a practice, and partly to a *laissez-faire* mentality (which again is due to a non-realization of its serious consequences).

8. The "Gaona" ceremony is generally performed in this part of the country. It usually coincides with the consummation of marriage. The desire of the parents generally is to perform it a couple of years after the attainment of puberty, but family circumstances and convenience sometimes modify this course.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. I should regard 17 to 18 as the age when a Punjabi girl may be considered to be physically fit for consummation of marriage without injury to her own health and for mothering a healthy child. In the vast majority of cases, girls who become mothers at 16 or earlier become invalids before long and their children can only be brought up healthily by adventitious aids.

10. In India generally a girl of the age of 18 years would be competent to give an intelligent consent to cohabitation, with due realisation of consequences.

11. I may claim to have known professionally (and now to know only socially) a good deal about the Punjab women of all classes and castes, and I know of no case in which a girl who became a mother at 16 or under has lived a healthy life after 25 years.

12. It is my considered opinion that early consummation of marriage and early maternity are greatly responsible for high maternal and infantile

mortality and that they vitally affect the intellectual and physical progress of the people. I would indeed say that among the factors responsible for a general deterioration of an individual or a community, *early sexual intercourse comes quite close to habitual starvation or under-feeding.*

14. Women in this part of the country, or indeed elsewhere, do not really favour early consummation of marriages. But among some classes, girls are, directly or indirectly, sold at an early age and the would-be husbands insist on having possession of girls as early as they can for fear of losing them.

15. No difficulties have, to my knowledge, been experienced in determining the age of girls.

16. No, the difficulty or margin again would not be reduced or minimised merely by raising the age to 14 years, as the best test of age is ossification which is not very helpful at the age of 14 years.

17. Yes, I would separate marital and extra-marital offences and would allow the present law and procedure to remain intact with the alteration suggested by Sir Hari Singh Gour.

18. The only difference that I would suggest is that in all cases within marital state, the trial should take place *in camera* and no cognizance should be taken except on the complaint of some man relative of the girl.

19. I would suggest that medical inspection of the woman ravished may be permitted to be had at the discretion of the Court in order to safeguard innocent persons.

20. I consider that the legislation fixing the minimum age of marriage is likely to be more effective than penal legislation fixing a higher age of consent for marital offences. I consider that such legislation would be in consonance with public opinion in this part of the country.

21. I would rely both on the strengthening of penal law to secure the object in view and on the progress of social reform by means of education and social propaganda. For extra-marital intercourse, the age might well be over 17.

Written Statement, dated the 6th August 1928, of Mr. BADRI DAS, Government Advocate, Lahore.

1. I do not think there is any dissatisfaction with the existing law in this part of the country.

2. The cases in which the assistance of the law is necessary are not very frequent in the Punjab. At the same time I do not say that the proposed advance in the law is not called for. In the Punjab marriages between an elderly male and a female child are still celebrated. With the spread of education amongst the girls the evil is decreasing. But the husband's wealth very often buys a child wife. Again amongst the ignorant poor, when marriages are arranged through shrewd relations, disparity of age is sometimes ignored. In such cases the tendency on the part of the husband is to disregard the wife's welfare. In normal cases, however, the marriageable age is rising and the evil contemplated by the Bill does not seem to exist.

3. Seduction is common enough in the villages. In the urban population this is not so common. Rape is confined almost exclusively to the uneducated agricultural or working classes. It is rare amongst the urban classes. I do not think age legislation has much to do with rape outside the married life as the offence against young girls is not at all common. Seduction no doubt is practised in the case of young girls, but again the proposed legislation has not much to do with it. Girls are seduced mostly for sale or marriage and not with a view to commit rape.

4. Long before the amendment of 1925, a marked tendency to raise the marriageable age was visible, and the age limit has steadily been rising.

This is, of course, the case with the average householder. The exceptions have been stated in Answer 2.

5. This is better known to the medical practitioner. As a layman I should think that the average girls in the Central Punjab attain puberty on the completion of the 14th year.

6. I do not think the evil is common. So far as I know it is confined mostly to the people referred to in Answer 2. Apart from this it may probably be found amongst people still practising early marriage. The tribe notorious for early marriage in the Central Punjab is Arain, a class of Mohammadan peasants.

7. I do not think the religious injunctions are still regarded with the same rigour as in the past.

8. The only ceremony usually performed amongst the high caste Hindus is the one practised on the consummation of marriage so far as the Central Punjab is concerned. It is very difficult to state definitely about the ceremonies, as these differ from district to district and from caste to caste.

9—12. I have no opinion to offer. The subject concerns the medical men.

13. I am not sure if there is much of a public opinion on the subject as the evil is not frequent in the higher classes.

14. Uneducated women are certainly far behind the educated men with regard to the age for marriage or consummation. But their views are losing strength.

15. I do not think much difficulty is experienced in determining the correct age of the girls forming the subject of offence under sections 375 and 376, except in cases when the place of the girl's birth is not ascertained. The birth registers coupled with expert medical opinion are very often sufficient. The vaccination registers also help very often. In case of doubt the two registers together ordinarily suffice to find out the age.

16. This question arises only when the determination of age depends on expert opinion only. Where the birth registers are available, it does not make any difference with what period of the girl's life the registers are concerned.

17. I think the two offences should be kept distinct. I agree with the punishment provided.

18—20. These are rather difficult questions. The interference of the Police in private life is to be deprecated so long as the Police continues to be what it is. Moreover police in the Punjab is mainly Mohammadan. The Hindus would certainly resent their intrusion into the home life. Similarly a Hindu Policeman in the other provinces would probably not be liked by the Mohammadans. Full acquaintance with the susceptibilities of the people and an appreciation of their feelings and prejudices cannot be expected from officers belonging to a different community. However, the difficulty is not insurmountable under this head. The real question to be considered is as to the effect which an investigation of the offence, when the girl or the husband denies it, would have on the future relations of the married couple or the modesty of the girl. It is all right with the lower classes. But in the case of the high castes, a girl may lose her position in society without any fault of hers. The consequences of the act are bad physically but the consequences of an investigation may in some cases be bad socially and even morally, and may affect the future happiness of the married couple. I should therefore consider the raising of the age of marriage as a better device than raising the age of consent only. I would suggest that marriage before the age of 14 be penalized and the punishment be made severer if such a marriage is consummated before the girl is 14. Marriage before the age of 14 should be made punishable with fine which may extend to Rs. 1,000 or simple imprisonment which may extend to six months or a year. But when the offence is aggravated by consummation before the girl is 14, the punishment may be imprisonment extending up

A person who deliberately offends against the law of marriage should not deserve any sympathy if he further aggravates the offence. When, however, the responsibility for the marriage lies with the parents and not with the husband, it is their duty to see that they do not allow or encourage consummation. The husband in such cases would also be liable as consummation can only be expected in the case of grown-up husbands.

21. I think social reform and the law should go hand in hand.

Written Statement, dated the 8th August 1928, of Nawab Malik MOHAMMAD HAYAT KHAN NOON, Deputy Commissioner, Gujranwala.

My replies are based on my knowledge of the western Punjab, where the Mohammadan population preponderates.

1. No—not amongst the masses, but there is a feeling amongst educated classes that the age of consent should be raised.

2. It is the general impression that from the medical point of view sexual intercourse at an early stage is condemnable, because it endangers the health of the girl and when the children are born, they are not healthy or physically strong.

3. (a) The rape cases are not frequent in this part of the country.

(b) I do not think the law of 1925 has had much effect. The offences of seduction and rape are mostly committed by the class of people who are ignorant of and indifferent to such amendments of law and therefore I do not think that the raising of the age of consent will result in much reducing the offences of rape and seduction.

The sexual intercourse against the consent of the girl amounts to the offence of rape irrespective of her age, but if it is done with her consent whether she is 14 or less—if not noticed by others—is not likely to be reported to court. Similarly sexual intercourse by a husband with his wife is not likely to be made basis of a criminal case. For prevention of sexual intercourse between a husband and a wife of tender age, Mr. Sarda's Bill is the proper remedy.

4. It had some effect amongst the literate classes.

5. It is for the medical people to answer this question. The general impression among the public is that girls of well-to-do people—due to better feeding, etc.—attain puberty at an earlier age than those of the poorer classes.

6. (1) Cohabitation before puberty is not common in the part of the country that I am acquainted with.

(2) No cases come to court except rape.

7. Amongst Mohammadans it is not due to any religious scruples that marriages at an early age do or do not take place.

The keenness of the parents to get their daughters married young is due to the fact that they do not want their girls to remain unmarried after they are grown-up in order to avoid risk of their being seduced or the contingency of their accepting a husband who is not acceptable to the parents.

8. No.

9. No answer.

10. I should say 16.

11—12. No answer.

13. Only confined to educated classes in the urban areas.

14. Yes, for the reason given in answer No. 7.

15. I do not know of any such difficulties in rape cases, because in rape cases generally the prosecution allegation is that intercourse was without the consent of the girl and not that it was with her consent but should be considered rape due to the tender age of the girl. But such a difficulty, I believe, is experienced in section 363, I. P. C. cases.

If in the Birth Register there is a column given for the name of the child it will be helpful in such matters. It is true that the names are not given to babies immediately on their birth, but the reporting agency could furnish this information quarterly regarding the births already reported.

16. No reply.

17. I don't think that the age of consent regarding a married woman should be raised at all. Such a course is not necessary, as it will make no practical difference in any respect.

18. Not necessary.

19. Nil.

20. (a) No.

(b) Fixing the minimum age for marriage will be less objected to, and is likely to be more effective than the penal legislation fixing a higher age of consent for marital cases.

21. I would prefer the progress of social reform by means of education and social propaganda.

Written Statement, dated the 8th August 1928, of Mr. TEJ BHAN MALIK, B.A., LL.B., Montgomery.

1. There appears to be no general dissatisfaction with the state of law as it stands. Whenever a case comes to court there is a regular struggle to get a certificate from medical authorities to suit the prosecution and the defence and in many cases both sides succeed. It is at this stage that it is sometimes felt that an innocent child has been seduced. But in the majority of cases it is the undue pressure of parents that makes the girl make a statement against her seducer. I do not know of cases where the girl has gone off in a moment but usually it is a well considered and planned scheme that is carried out after the two have met and enjoyed more often than the world knows.

2. It is always better to have laws which support an ideal which to-day appears to be raising the age of consent and I therefore would support the new amendment.

3. The crime of seduction and rape is frequent in this district. The amendment of 1925 has had no effect in preventing or reducing cases of rape. I think the public has no idea of the amendment so far. A more efficient administration of the law by better and more speedy investigation is the only measure to make the law effective.

4. The answer to this is also in the negative because:—

(a) The masses have not heard of the amendment.

(b) The age of consummation in this district is pretty high already.

(c) The public opinion is certainly getting strong on this point but the stimulant is the public platform and not the law court. It is good to have a good law because it strengthens the hand of the social reformer.

(d) Times have changed so much that early marriage to-day looks like an event of the past. I do not deny that the thing exists and is resorted to by fond old parents having only one child to marry.

As submitted above let us put the law at its best and leave the rest to time.

5. The usual age at which girls are believed to attain puberty is between 14 and 15. The girls in the towns feel the call earlier than girls in the villages and similar is the relation between rich and poor.

6. (1) No.

(2) Yes.

(3) No.

Very rare.

7. I don't think the religion has anything to do with marriage at a certain age, it depends more on custom than anything else. It might be one case out of ten thousand that someone believing in an imaginary religious injunction marries a girl before puberty. I used to hear a Sanskrit Sloke quoted in favour of marriage at nine but that is admitted to have been written for the time of some Mohamadan King. This I say on the authority of an old orthodox Pandit.

8. No.

9. A medical man can answer this question.

10. Due realisation of consequences is a rather difficult word. This thing comes off more from instinct than any premeditation. Before a person knows there are consequences it is already too late. The Indian girl but for her illiteracy is as good as any other girl. We can fix this age only arbitrarily.

11. No. This is for a medical man.

12. Yes I think it is a vital question for the nation, because I believe early consummation has caused havoc in the past. But I will submit that it is our boys who want to be protected more than the girls. It is the seed that is more important and should be looked after.

13. The educated community feels strongly on this point and the masses are quite willing to follow.

14. No.

15. There being no definite criterion for determining age there is always serious trouble on this point. I have seen cases in which the police, knowing the result of X-Ray and examination by senior doctors against it, has gone to the very subordinate of the civil surgeon and obtained a certificate to suit its ends. The civil hospitals should be provided with X-Ray apparatus. The system of registration of births should be improved in—

(a) More regular registers be maintained by the lambardar in the village.

(b) Entries should be signed or thumbmarked by parents.

(c) these registers should be collected as soon as finished or at the latest after every three years and kept as a permanent record in the district record room.

(d) The revenue staff should inspect and verify these entries.

16. I think not.

17. Yes. For extra-marital offences the punishment as it stands to-day. For marital offences the punishment should be fine only up to two thousand rupees.

18. The procedure is all right as it stands.

19. None.

20. I think it is better to fix a higher age of consent for marital cases because by this we do not fix any age of marriage. This satisfies all communities, who feel that their religion enjoins marriage at or before a certain age. This also satisfies the sentiment of certain parents. This also is an aid in settling many family disputes and complications. At the same time the marriage tie and the ceremony will not in any way stand in our way of reform. This in short will satisfy every sort of susceptibility and is more in accord with public opinion.

21. As I have already submitted I want the law to aid the platform.

Written Statement, dated the 8th August 1928, of Lala RADHA KISHEN, M.A., LL.B., Advocate, President, Municipal Committee, Montgomery.

1. I do not think there is either satisfaction or dissatisfaction with the state of the law as to age of consent as the law is not generally known in the District.

2. Personally I do not think there is much justification in retaining the law of the age of consent as in my humble judgment immature girls should not be interfered with and the law should help in preventing such interference. I think the opinion of thoughtful men justifies an advance on the present law.

3. Crimes of seduction or rape are frequent in this District. The amendment of the law in 1925 can hardly be said to have succeeded in preventing or reducing cases of rape outside marital state or the improper seduction of girls for immoral purposes. In this district there is a dearth of women owing to new colonization of lands and this is a potent cause in raising the number of such incidents. So far as this colony is concerned it is not possible to propose any law which might have the desired effect unless a rule could be made that no unmarried grantees or tenants would be permitted to till the land.

4. As stated above the law is not generally known and I venture to think that there are more cases of cohabitation with girls of thirteen than actually come to light. In this district there has been only one prosecution after the passing of the amendment of the Act in 1925. I can only suggest as effective measures (a) education of public opinion (b) making the existence of this law much better known than it is.

5. The usual age at which girls attain puberty in this part of the country is 13 to 14. The age is nearly the same in all castes, communities and societies.

6. Cases of rape and seduction soon after puberty and before the girl completes 13 years do now and then come to court.

7. I do not consider that the early consummation of marriage before or at puberty is due to any religious injunction.

8. Gowna and Garbhadan ceremony is not performed in this district.

9. I consider that the attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. I think the consummation might with advantage be postponed till 2 or 3 years after attainment of puberty.

10. At the age of sixteen or seventeen years.

11. In my professional work I have come across girls with whom cohabitation has taken place before puberty, all such cases have been accompanied by injury to genital organs but as I have lost touch with the cases as soon as the trial in court was over I cannot say, if the injury was permanent or temporary.

12. Early consummation and early maternity is, I think, responsible for high maternal and infantile mortality. I ascribe physical and intellectual poverty to early marriage and cohabitation before full maturity.

13. The development of Public opinion in favour of an extension of the age of consent is only confined to the intelligentsia. Other classes hardly take any notice of this law.

14. Women in this part of the country would perhaps like their children to be safely married and provided for early but they prefer postponement of consummation till after puberty.

15. There is always difficulty felt in every court case about the exact age of the girl. The birth records are very badly kept; doctors generally disagree; and there is no accurate measure of determining the age of a girl. One of the measures I would suggest is that the name of the child

might be ordered to be entered in the birth register within 3 months of the date of the birth.

16. So far as the medical opinion is concerned the difficulty would remain exactly as at present, but it could be obviated by rigorously enforcing the entry of names in the birth register.

17. I would keep the extra-marital and marital offences separate. I consider the punishment already provided in the Penal Code is sufficiently deterrent.

18. I consider that the procedure of trials for offences within and without marital state is good enough for all practical purposes.

19. I cannot make any suggestions of any further safeguard against the collusion and unprofitable prosecution mentioned in question No. 19.

20. I think that Penal legislation in fixing a higher age of consent would be more in consonance with public opinion although I think the more effective remedy would be to fix the minimum age of marriage.

21. As the progress of social reforms by means of education and social propaganda is rather slow, I would supplement it by a penal law to secure the object in view till such time as social reform reaches the required standard.

**Written Statement, dated the 9th August 1928, of SHAREEFAH
HAMID ALI, Chairman, Standing Committee, All-India Women's
Conference on Educational Reform, Kashmere.**

1. There is very great dissatisfaction among the educated classes. A strong desire has been expressed on every side that the age of consent should be raised by several years.

2. As it is impossible for girls of 13 to realise the consequences of marital relations and as girls of 13 are incapable of bearing healthy children or of rearing them or educating them, I feel it is an imperative necessity that the age of consent for married girls should be raised to at least 16 years. As the consequences are even more grave in the case of unmarried girls I think that the age of consent in their case should be still higher by a few years—at least 18.

4. I feel that for all practical purposes it is useless to fix a different age for marriage and for consent within the marital state. This law is either ignored or circumvented in (chiefly) rural India. Both the marriage age and the age of consent (within the marital state) must be the same if it is intended to protect young immature girls from bearing the burden of motherhood.

5. Between 10 to 14 generally—at 9 in exceptional cases. The women of the labouring classes mature later than the others.

9. No. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I have known girls of 9 to attain puberty when they were mere children and quite immature. I should think several years after puberty must elapse before a normal Indian girl is fit for marriage and motherhood. For full physical development the age must be at least 16. In some cases even 16 is not enough. Some girls are not fully developed until they reach the age of 18 or 20.

10. At 16.

11. Yes. A case of a child 11 years old was brought into my husband's Court in the Thar and Parkar District, Sind, three or four years ago. The girl died through the effect of cohabitation before puberty and her body was fearfully mutilated.

I have seen a number of cases of very young girls in hospitals and maternity homes who have become mothers soon after puberty and who

were physically wrecked by having borne children at too early an age. Their usual complaint is acute anaemia. In most cases the babies of such girlmothers die as soon as they are born.

12. Yes. I believe that early marriage and early maternity is one of the chief causes of high maternal and infantile mortality. I consider any case of motherhood as "early" before 18. It is undoubtedly one of the chief impediments in the cause of women's education.

In most parts of India marriage, gaona or even betrothal ceremonies are made a pretext by the parents for removing quite small girls from schools. In this way women suffer both intellectually and physically.

13. Yes, but confined to the educated classes.

14. Yes, uneducated and ignorant women do. They are unfortunately in the majority.

15. Yes, there have been many difficulties. The only remedy is to raise the age of consent high enough for even the doubtful cases to be safe.

16. No. The age of 14 would not make a perceptible difference. The difficulty would be minimised to a greater degree if the age of consent was raised to 16 and would entirely disappear if it was raised to 18.

20. Fixing the minimum age of marriage is more acceptable to the public. It is not advisable nor feasible to interfere in the relations of husband and wife.

21. I would prefer to rely on the strengthening of the Penal Laws.

Written Statement, dated the 9th August 1928, of MALAK ZAMAN MEHDI KHAN, K. B., B.A., Deputy Commissioner, Mianwall.

1. There is no particular dissatisfaction with the existing law as the population of this district is about 85 per cent. Muslim and the remaining 15 per cent. is made up by Hindus and others. Early marriages among Muhammadans are practically unknown in this district. The Hindus of this district also generally marry their daughters at a mature age, i.e., after 13 years of age, though early marriages are also not unknown. Among educated classes of Hindus there is an awakening to the effect that early marriages are undesirable.

2. There is no justification for retaining the law of the age of consent as it is, as such a course affects the health of a young bride and results in deterioration of health of the children also. An advance on the present age of consent will be welcomed by the people.

3. Crimes of seduction or rape are very frequent in this district. The amendment of the law made in 1925 raising the age of consent to 14 years has had no effect on preventing or reducing cases of rape outside the marital state, etc. The only remedy that can be suggested for prevention or reduction of such crimes is heavy punishment in cases established by evidence.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years has not been effective in protecting married girls against cohabitation with their husbands. When the marriage of a girl takes place at the age of 13 then consummation follows as a natural conclusion. The girls never complain against their husbands as such a course is against the modesty of Indian girls and further they do not want to ruin their careers at the threshold of their married lives. No other remedy can be effective unless the age of celebration of marriage is raised to 15 years by law. Education and propaganda may bring about a change in public opinion against early marriages, but that will take very long time.

5. Girls generally attain puberty between the ages of 12 and 15 in this part of the country. These remarks apply to all communities or classes of society. There are several factors such as food and society, etc., which have a bearing upon the puberty of a girl.

6. Such cases are pretty common, but they do not come to Court for the reasons stated above.

7. Religion practically plays no part in the consummation of marriages before or at puberty.

8. The words "Gaona" or "Gorbhadan" are not known to me. Hence I cannot express any opinion about them. What I know is that amongst Muhammadans sometimes Nikah ceremony is performed before a girl attains puberty, but consummation of marriage generally takes place after she has attained puberty, though in some cases consummation takes place before puberty also.

9. It will be better to take medical opinion on this point.

10. At the age of 16 in regard to strangers.

11. No remarks.

12. Early consummation and early maternity are not only responsible for high maternal and infantile mortality, but also are affecting the intellectual and physical development of the people. Immature couples cannot bring forth healthy and well developed children.

13. There has been no development of public opinion in this district in favour of an extension of the age of consent in marital and extra-marital cases since the amendment of the law in 1925, but if the age of a girl in marital cases is raised to 15 and in those of extra-marital cases to 16 the change will be welcomed by educated classes. The latter are the only classes at present who can form a useful opinion in these matters.

14. No. The only reasons why early marriages take place are honour of a family and poverty. In the former case well-to-do people generally want to marry their daughters at an early age so that rape and seduction may not bring disgrace upon the family. In the latter case the poor people marry their daughters as they obtain money thereby and also want to avoid the expenses of bringing up their daughters.

15. No difficulty is experienced in cases in which the birth of a girl is registered in the birth register of a village or a town. In other cases it is only a matter of guess and even medical opinion is helpless in the matter. The only effective remedy is the registration of births.

16. No. The raising of age of consent to 14 years will have absolutely no effect upon the determination of age.

17. It will be useless to prescribe any punishment for marital offences, as such offences are not likely to be brought to the notice of Courts. The effective remedy for the prevention of such offences is to prohibit child marriages altogether. For extra-marital offences the present law is quite adequate.

18. The procedure for both kinds of offences should be the same.

19. No.

20. It would be better to fix a minimum age for marriages than a higher age of consent within the marriage relationship. There is no vocal public opinion in this respect in this district.

21. Education and social propaganda are no doubt very effective means of bringing about a change in the outlook of the people in this respect and cases are not wanting in which educated parents have refused to marry their girls before 15 or 16 years of age, but such a course will take a very long time. The speedy and effective means of bringing about a change for the better are to prohibit child marriages and to fix a minimum age for marriage at 15.

**Written Statement, dated the 9th August 1928, of Khan Bahadur
SHAIKH SIRAJ-UD-DIN, B.A., Deputy Commissioner, Jhang.**

With reference to your No. 42 A. C. C., dated 18th July 1928, I have the honour to forward herewith my replies to the questionnaire received with your above. These replies generally would give an idea about the custom that prevails in the Jhang District. Nothing contained in them should be construed to apply to the Punjab generally.

1. The district is very backward in education and is inhabited mainly by people who are altogether illiterate and Muslim by religion. They are not known to have worried themselves about the state of law regarding the age of consent as contained in Sections 375 and 376 of the Indian Penal Code. According to their moral code sexual cohabitation by a male with a female at any age unless she is married to him is considered an unpardonable offence. Where parents are alive the taking away of a girl even at an advanced age of 17-18 with her consent by a stranger is not looked upon with approval. Although there has been no apparent demonstration on the part of the people to convey their dissatisfaction with the law of age of consent as it exists at present, yet from the feelings of the people as they are observed in every day affairs, I can say with certainty that the law in these sections so far as it governs cases outside marital state is considered by the people of this side not very helpful in protecting girls from the indecent attacks of mischievous men.

2. Girls generally are uneducated and are not able to form a correct opinion of the consequences of their acts when they are still 14 years of age. The grown-up men with evil tendencies can easily prevail upon girls of that age to make them consent to sexual connections. With regard to age at which the husband can have cohabitation with his wife I need only say that 13 years is too low inasmuch as the girl is not yet fully developed and has not attained sufficient discretion to be able to perform the functions of a mother satisfactorily. For these reasons, I am of the opinion that the present law regarding the age of consent requires amendment.

3. The district is not particularly noted for the crimes of seduction and rape. The amendment of the law in 1925 has not produced any particular effect on preventing or reducing such crime. Seduction of girls takes place in this country only if they reach the age of 18 or 20. Very few cases have come to my notice in which a girl of a younger age was seduced by a stranger.

4. Consummation of marriage in this part of the province generally takes place after the girl has sufficiently developed and is fit for sexual intercourse though the *nikah* ceremony often takes place when she is very young. The passing of the law in 1925 to raise the age of consent within the marital state to 13 years has therefore had no effect on the life of the people. The people already are in the habit of acting on the rule that cohabitation with a girl should only be allowed when she is fully developed for that purpose. The law might have had some useful effect somewhere in the down country, but in this district the general custom relating to marriage makes it compulsory for the couple that they should cohabit only when the girl was quite of age.

5. In the towns girls generally attain puberty between the ages of 13 and 14 while in the villages they know nothing about sex before 15. Although there might be some difference in the ages at which girls in various communities are fully developed in their constitution yet I do not think there is any appreciable difference in the age at which girls in different communities attain puberty. This age is generally the same in all communities and only varies according to the surroundings in which the girls are brought up.

6. The answer to this question is in the negative. Cases of cohabitation between husband and wife before she has attained puberty or before she

has completed 13 years or soon after puberty are very very rare. During the period of three years in this district, I came across only one case which was brought into court and in which the boy-husband aged about 17 years was accused of having intercourse with his girl-wife of 11 years. The boy in that case did not look to be enjoying sound brain.

7. I have already stated in the above replies that the practice of consummation of marriage at early age is unknown in this district. Among the Muslim community no religious considerations prescribe such a step. Among the Hindus also in this side of the country this practice is not so common. Among the orthodox probably such considerations carry some weight, but these ideas are giving way before the general opinion that such practices should be abolished.

8. No such ceremony "Gaona" or "Garbhadan" is known on this side.

9. The attainment of puberty in my opinion is not at all a sufficient indication of the fact that the girl has fully developed physically. Full development of a girl's physique would always depend on her age while the symptoms of puberty might appear early or late according to the surroundings in which the girl is brought up. A girl generally attains puberty at 14 and should be allowed 3 years for the development of her parts and to attain full stature. I think 17 is a proper age at which consummation can be allowed without injury on her health and that of her progeny.

10. I consider 18 years as the age at which girl can be considered to be competent to give an intelligent consent to cohabitation with a due realisation of the consequences.

11. No.

12. Yes, it is obvious that a young girl who is still playing with dolls will not be able to perform the functions of a mother satisfactorily if a child is born to her at 14. At the same time it is as often as not that she will hardly be able to bear the strain which child-labour will cause on her physique. I am of the opinion that a good deal of high maternity and infantile mortality is due to early consummation and early maternity. As to whether the practice has any effect on the intellectual progress of the people, it is very difficult for me to offer an opinion.

13. I have already stated in the above replies that early consummation of marriage is not common in this part of the country and the people have never worried about the age of consent. As to the age of consent in extra-marital cases the public opinion has and shall always be that the present limit is very low. In my opinion a stranger cohabiting with a girl under the age of 18 years should be held guilty of rape.

14. No.

15 and 16. Where the birth of a girl cannot be traced in a birth register of the town or village it is very difficult to determine exactly what her age is. In many cases such births are not traceable in village records. In my opinion the registration of the birth of a child should be placed on a basis which will make it difficult for parents to omit its report to proper authorities. If the age is fixed at 18 for cohabitation outside marital relations the difficulties in determining the age of the girl will be materially reduced.

17. It is advisable that the marital offences should be separated from the extra-marital ones. Very stringent punishment should be provided for cases in which strangers are prosecuted for the offence of rape. Seven years' rigorous imprisonment with or without fine should be the maximum punishment. In the case of a husband, who is guilty of such sexual intercourse with his wife without regard to the minimum age that might be fixed, the punishment would depend on the merits of each case. The maximum punishment may be the same as provided for strangers, but in practice a more lenient view of the offence should be taken.

18. No cognizance of the offence of rape committed by a husband on his wife should be taken unless a regular complaint is made by the girl or her parents; although when brought to court should be tried by the District Magistrate himself.

19. I do not think any safeguards are necessary.

20. In my opinion, it is very necessary that minimum age of girl for marriage should be fixed for legislation and this should in no case be less than 13. This will exclude the possibility of a husband having any opportunity for sexual intercourse with his wife at any age below 13, though the age of consent even in marital relations should not be less than 15, yet if any cases of rape by husband on his wife arise they would not give rise to so much feeling as they give at present when grown-up husbands are prosecuted for sexual connections with wives of very tender age. In my opinion fixing of minimum age for marriage by legislation will be more effective than raising the age of consent. In this part of the country where people generally arrange for exchange marriages or have to pay in cash for a wife the fixing of minimum age for marriage purposes may not be viewed with favour, but I do not think that opposition to any such legislation will in any way be strong or effective.

21. The laws of the country should continue to be changed according to the progress of social reforms which can be achieved by means of education and social propaganda. I think it would be better to employ both kinds of means to achieve the object which the Age of Consent Committee has in view. Penal laws of the country should be strengthened and education and social propaganda should also be used to bring about these reforms.

Written Statement, dated the 10th August 1928, of Lala JASWANT RAI TANEJA, M.A., LL.B., District and Sessions Judge, Sargodha.

1. I do not know of any general dissatisfaction, but it seems to me that the age fixed is unreasonably low.

2. The present law of the age of consent appears to me to be exceedingly unsatisfactory as the girls below the proposed age have not the understanding mature enough to realize the fatal consequences of the consent that may be obtained from them under improper inducement, fraud or threat.

The advance on the present law is not only supported by the entire educated community, but as I understand from the newspaper reports, even ladies have been pressing for the raising of the age.

3. The crimes of seduction are not rare in this province, but I do not think crimes of rape are frequent here. The crimes of seduction are really by far greater in number than they are brought to the notice of the Courts. The Amendment made in 1925 cannot be said to have succeeded in preventing or even reducing the cases of rape outside the marital state, or the improper seduction of girls for immoral purposes. There was no case within the two districts (Jhang and Shahpur) in my charge in which the husband of the woman was the accused, and so there is no data to judge of the effects of the amendment, but all competent gentlemen consulted in the matter are of opinion that the amendment introduced in 1925 is a sound one and ought to stand.

I would not suggest any other changes in the law to make it more effective except that the proposed raising of the age of consent, even for the matter of being placed in the Statute Book, would be a healthy improvement. In my opinion, it would be a fairly effective check on early marriages, apart from Mr. Sarda's Bill proposing to penalize the child-marriages.

4. I have no data to say that the amendment of 1925 has been effective in protecting the married girls either by postponement of the consummation of marriage, or by stimulating public opinion in that direction, or by

putting off marriage^{*} beyond 13, but my own impression is that the said amendment must have stimulated the public opinion in that direction and might have postponed a number of contemplated marriages before the age of 13. To my mind, a parent would rather postpone the marriage of his child to an age beyond 13 or 14 within which the statute may penalize consummation than to have the risk of a possible prosecution *at the instance* of his enemies. If that view is correct, that would also be one of the reasons for enforcing the proposed amendment as that would discourage early marriage.

5. The girls in this province usually attain puberty at the age of 15, but I do not think even at that stage they can stand the strain of maternity without almost permanent injury to their health and longevity. I do not think there is any noticeable difference in the age at which the girls attain puberty in different castes, communities or classes of society. Perhaps in the hilly tracts the puberty is a bit belated on account of the difference of climate.

6. Cohabitation between married couples is not uncommon irrespective of the age, unless the boys are very young. Otherwise the idea is that the marriage authorises consummation and too much regard is not had to the girl's age or health, but no case came to Courts so far as I could make out.

7. I do not know of any religious injunctions requiring early consummation of marriage though certain classes among the Hindus do think that the marriage of a girl must be performed before she gets menses as they think it a sin for her parents to let their girls in menses remain unmarried. But even they do not think that consummation of marriage is necessary so early. Even as to the performance of the marriage, the more advanced opinion is that such so-called religious injunctions are interpolations of later times in their scriptures due to exigencies of time and not genuine. I cannot quote any authority and do not know of any penalty prescribed for the breach of such an injunction.

8. The 'Garbhadan' ceremony is, so far as I know, performed only in some families who follow the Arya Samajic rites. It is supposed to be performed when it is proposed to have consummation of marriage, and amongst the Arya Samajists, the minimum age of a girl for marriage is 16 years.

9. I do not think that attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I do not think a girl under 16 years or rather 17 years can be considered fit for consummation without injury to her health and that of her progeny. In good families, girls have begun to attend Schools as a matter of course now, which was not the case a few years back. I also find that the sort of education and schooling that the girls are getting makes them still less fit for consummation and maternity at the age of even 16 or 17, and an uneducated healthy girl who has never been to school may not suffer from consummation at the age of 16 or 17, but the risk of an injury is much greater in case of half educated girls that our schools are creating. I also find Myopia on increase in School-going girls, and think that eyes of such girls may suffer worse from confinement.

10. Not before 16 years in any case, in my opinion.

11. I cannot give any concrete cases.

12. Yes. I do consider that early consummation and early marriage are responsible for high maternal and infantile mortality and for physically and intellectually weak issues. To my mind, the point is so obvious that it does not require any reasons in proof of it.

13. Agitation has not been considerable since the amendment of the law in 1925 so far as I can gather.

14. I do not think.

15. No difficulties have been experienced in determining the age of the girl in the few cases of rape that came to Court, and so the second part of this question does not arise. We have got in this province Municipal birth

records and coupled with the medical evidence, we generally get reliable data about the girl's age when a question about her age arises, besides the evidence of her parents and other near relations.

16. In view of my answer to question No. 15, question No. 16 also does not arise.

17 and 18. The maximum punishment prescribed for the extra-marital and marital offences, and the facts that the former are non-bailable while the latter are bailable and triable only by a Court of Sessions, are sufficient safe-guards, and I have nothing further to suggest.

19. I have nothing further to suggest.

20. That depends upon the legislation which is eventually enacted for fixing the minimum age of marriage, and the provisions passed to enforce that legislation. The advanced public opinion would support the reform on both the lines, and I think a combination of both the alternatives would surely have some good effect.

21. I think the strengthening of the penal law should help the progress of the social reforms by means of education and social propaganda. They should both go together. The strengthening of penal law in my opinion would stimulate the progress of social reform by other means.

Written Statement, dated the 11th August 1928, of L. CHANAN MAL, M.A., P.C.S., Extra Assistant Commissioner, Sialkot.

1. There is no dissatisfaction in the Punjab with the law as to the age of consent as contained in sections 375 and 376 of the Indian Penal Code.

2. These two sections after being amended in 1925 have a very rare application in this part of the country so far as the age of consent is concerned. I mean to say we have practically no cases of a husband and a wife in which the husband may have been charged for rape of his wife. Similarly we have few cases in which a man may have been charged for having committed sexual intercourse with a girl under 14. The commonest type of a rape case known here is a rape with a grown-up woman—a rape by several persons in succession with an attempt not to deliver back the woman to her husband or other relations. There are no special circumstances in the Punjab justifying any further advance in the law of the age of consent as contained in sections 375 and 376, I. P. C.

3. Crimes of seduction and rape are very frequent in Sialkot District. Half of the cases which go to the courts relate to women. There are regular dens of women-sellers in the District and even very respectable Mohammadan and Sikh Jats are not ashamed of secretly engaging in this trade. In fact there are some notorious characters, scattered about who are openly known as traffickers in women and to whom people can safely take the abducted and kidnapped girls, being sure that they would have a price. It is said of a Jat that a man brought to him an old hag. The Jat on seeing her at first said that she was of no use to him but afterwards he reconciled himself to the idea of purchasing her and he kept her in his house having given a goat as her price. He is alleged to have said that a woman is a woman though infirm and aged. The amendments introduced in the year 1925 have not been of much use. On the contrary I would suggest that to prevent seduction of women in general and to stop women traffic sections 363 and 368, I. P. C., may be amended. The directions in which I want this amendment to be carried out have been discussed at great length in the note enclosed herewith in the form of general observations. As this reform of law is strictly speaking not within the ambit of the age of consent committee I have decided to append a separate note herewith stating in general terms the inadequacy of the present law to meet and to cope with the crimes regarding women, and minors.

4. No figures are available but it can be safely said that the amendment of 1925 has not borne out any visible fruits. The amended provisions are not

widely known to the general public; even the members of the legal profession are generally ignorant of it, what to say of the lay man and the general mass of the illiterate public. I am not prepared to advise that we should proceed with a further amendment of these two sections, namely, 375 and 376, I. P. C.

5. The girls usually attain puberty between 15 and 16. This age however varies with various castes, communities and classes of people according to their respective modes of life, their means and their diet and education. Village girls usually grow up much more quickly than girls in cities.

6. Yes, but this is confined only to lower classes and to professional dancers and prostitutes. Among them, girls are allowed to co-habit before they have attained puberty or soon after puberty. Cases of a cohabitation with a girl under 13 are rare. I know only of one case in which the girl is under 13 and is alleged to have subjected to intercourse by her husband. This case is pending in the Court of the District Magistrate and I have alluded to it in my note attached herewith.

7. Yes. It was due to early customs and practices and to some unauthorized religious notions which have disappeared with the spread of literacy and education.

8. *Garbhadan* ceremony is unknown in the Punjab. There is however what is called *Maklawa* ceremony which may be said to have taken its place. As I have explained in my note, cohabitation between husband and wife before the *Maklawa* ceremony is prohibited. In fact steps are taken to guard the couple and to prevent sexual access. There is also a corresponding ceremony among the Mohammadans which is known by the name of "change of clothes". Among them a *Nikah* or a marriage is a contract and it is completed only when the girl has attained maturity and is sent to the house of her husband. The word "change of clothes" is commonly understood to mean that the promise of marriage has been fulfilled, the contract has been performed and the marriage has been consummated.

9. The girls usually attain puberty before they are physically matured. Ordinarily it takes another two years to attain physical maturity after attainment of puberty. In my opinion no girl can be said to have attained physical maturity until she has attained the age of 17 to 18 years. There would be no fear of injury to her health if cohabitation takes place after she has attained physical maturity.

10. Seventeen to 18 years.

11. I know of a case at Firozepur in which a man of about 38 raped a tender girl of 8/9 years. The girl continued to bleed for several days. She also suffered from fever and I could see that during the trial also she was in a perpetual terror of the man and started trembling on seeing him. In another case at Sialkot a girl of about 16 who was poorly nourished and appeared to be 13/14 only was raped by a mendicant. I could see that her health had been affected. She was pale and weak and terror stricken. The circumstances in which she procured her liberty were God-sent. He has been since sentenced to 7 years by me and his appeal is pending in the High Court, Lahore. Where the girl is more or less immature and the person who cohabits with her is strong and grown up, the cohabitation does tell on the health of the girl. In many cases the girls get conceived and the birth of children at an early age permanently impairs the health of the girl-mothers.

In another, a celibate woman of 20 was decoyed from her hermitage by a grown up rascal of a woman and on being taken to a well in a village she was raped by 3 strong men in succession and more than once during one night. She bled profusely from the uterus, bleeding having continued for several days. She was also delivered a blow with a chopper on the head when she carried. Her face and eyes were all swollen when she appeared in the court and it took her several days to regain her normal health. When she escaped from that well early in the morning she had only a loin cloth on her body all full of blood. Instances can be multiplied. Wherever there was a great disparity in ages, the man standing in the position of a father to the girl or

more, the coition told adversely on the health of the girl and whenever she was subjected to sexual intercourse by more than one person in succession it had permanently impaired it.

12. Yes. But in the Punjab the evil is not half so great as in some other parts of the country. Child marriages have died out under the influence of Arya Samaj and other Public bodies. Public opinion is getting strong enough in this part of the country to withstand this evil. Isolated cases in which a child is married to an old man for greed of gold are however still met with. But society as well as the Press also, if it gets the news, always condemns such marriages.

13. None.

14. The idea which generally prevails among the Hindus is that the girl should be given away in marriage before menses starts. Otherwise the sanctity of giving the girl away disappears. And in the present stage of our life girls ordinarily start menses at 14 or even 13. Any Legislation that makes it an offence for a man to cohabit with his wife, the wife being under fourteen, would not be received in a good spirit, because it would be believed that it runs counter to religious injunctions.

15. The determination of the age of the girls in general is fraught with several difficulties, the reasons being as follows:—

- (a) The births and deaths are not punctually recorded. In some families some births are recorded and some births are not recorded at all.
- (b) There is likely at times to be a confusion when there are two persons of the same name as the father of the girl.
- (c) Medical evidence is more or less conjectural. Some times novel proposition are advanced by the profession and the ages given by them appear on the face of it to be ridiculous.
- (d) No Horoscopes of girls are prepared in the Punjab among the Hindus.

In offences under sections 375 and 376, I. P. C., there has been no such difficulty at all. Cases of rape with girls less than 14 are very rare, and do not succeed where the girl is a consenting party and the age has not been satisfactorily established to be under 14.

16. No.

17. No special Legislation in this matter is necessary except that section 552, Cr. P. Code, should be amended so as to extend its scope to girls under 16. These powers should also be conferred on all 1st class Magistrates. I would also suggest that where the keeping of a girl by another for immoral purpose amounts to an offence the 1st class Magistrate should be authorized to order her delivery to her husband, parent, or other guardian, no matter what the girl herself desires.

18. No difference need be made.

19. No.

20. A Legislation fixing the minimum age of marriage is comparatively more useful because it raises the tone of public morality, and its effects are universal. On the contrary no hopeful results could be expected from a Penal Legislation, as people are averse to taking to law courts in general in these matters and prosecution also generally end in smoke. I am of the opinion that we should leave matters as they are and we should not even advise the introduction of a measure fixing age limits for marriage.

21. I would prefer to rely on the progress of social reforms by means of education and social propaganda. I am not in favour of strengthening the Penal Law to secure this object.

General Observations.

The amendments introduced in sections 375 and 376 in the year 1925 are very rare in their applications. In fact during the last three years I know

of no case in which a husband may have been charged for having raped his wife, the wife being under 13 years of age, nor do I know of any case in which there was a rape by a man on a girl under 14.

There has been only one case in this District between husband and his wife which is now pending in the court of the District Magistrate in which the accused has not yet been served and the girl who is alleged to have been raped has also not been recovered. The parties are *Kunjars*, professional prostitutes, a class of people with very lax morals and nothing can be said about it till after the girl has been recovered and the prosecution evidence against the accused has been examined after they have attended the court.

Ordinarily speaking child marriages are very rare in the Punjab and the girls even if they be married at a very early age are not sent to their husbands' house till after they have attained maturity. In fact there is what is called *Maklawa* ceremony among the Hindus which in other words means that the husband and wife have no sexual access to each other till after this ceremony is performed. The wife is closely watched and guarded when she first goes to her husband's house after the marriage. She is not allowed to sleep in the same room with him. An aged lady who is usually the family barber's or water-carrier's wife accompanies the bride and sleeps in the same room with her during her stay in the house of the bridegroom. The stay of the bride in the house of the bridegroom is also very much curtailed and does not exceed two or three days at the most with the result that the bride and the bridegroom have no sexual access to each other at that time.

The *Maklawa* ceremony ordinarily takes another year or so and where the girl is of immature age the *Maklawa* is likely to be postponed to two or three years.

In the Punjab there is no special necessity to further amend sections 375 and 376.

The amendment which is now contemplated by Sir Hari Singh Gaur's Bill would be more or less a theoretical doctrine and would be of no practical utility. To penalise sexual intercourse with a woman under 16 would not be a move in a desirable direction. The amendment if carried out would mean a disastrous change in law, and would be of no use at all.

I venture to think that there is really something wrong with our offences against women and children and the legislature in trying to remedy the defects is hastening changes in section 375. If the whole situation is considered calmly, we come to the conclusion that the defects lie elsewhere. The present law affords very little protection to guardians and parents. Kidnapping is not a continuing offence and as soon as a girl is removed from the lawful keeping of her guardian the offence is completed and no penalties can avail against those persons who keep the minor in their possession after she has been once removed from the lawful keeping of her guardian provided of course that these persons do not wrongfully conceal or confine the minor.

In the majority of cases people who know law ordinarily do not confine or conceal the minors when once they have taken hold of them. Time is also a great healer and the minors also gradually come to familiarise themselves with their changed surroundings and changed companionship. The present law, therefore, cannot meet the cases of a very large number of persons who keep minors and others in their wrongful possession after those minors had been once removed from the lawful keeping of their guardians or parents. To put it in other words the present law will hold only those persons responsible who are proved to have removed the minors from the lawful keeping of their guardians or parents. Usually such persons are procurers or bawds and however heinous their offence may be it is not so heinous as of those who actually handle these minors and lead them astray.

I am referring to this last class of persons and it is an open secret that our present Indian Penal Code does not penalise the actions of this latter class of persons. I am of the opinion that all that we want would be obtained if we amend section 363. I would propose that it may be penalised to detain

a minor for purposes of illicit intercourse or for sale. To attain this object, a necessary addition can be made to section 363 or a *proviso* may be added to section 368, I. P. C. The proviso should run as follows:—

"Provided that in the case of kidnapped persons it would be sufficient to constitute the offence that these persons are being detained whether with or without their consent for purposes of illicit intercourse or for prostitution or sale".

This measure if passed into law would bring all those people who handle the minors after they have first left the threshold of their parents liable for their inhumane acts. It is true that magistrates are not moralists. It is also true that laws cannot be an exact imitation of social morality but laws which cannot check immorality and which give immunity to bad characters are laws which should no longer be retained.

There is a general impression that the law so far as it relates to minors is extraordinarily defective and is inadequate. Minors usually lack will power and no legislature should be guided by caprices of minors. It was this idea which was in the mind of the legislature when section 363 was enacted, but the section as it stands at present is quite insufficient and all that the Age of Consent Committee desire to achieve by amending section 375, I. P. C., will be gained if on the contrary an amendment may be made in section 363, I. P. C.

If we penalise the possession and detention of minors for purposes of illicit intercourse, no matter whether intercourse is actually proved or not, the act of the persons dealing with the minors will be brought under the purview of the law and our object would be attained without much ado. The prosecution will be saved from the task of proving that sexual intercourse did take place. In fact for girls who are addicted to sexual intercourse no evidence except those of eye-witnesses is sufficient to prove that a sexual intercourse has taken place with a particular individual. The task of the courts will be rendered lighter and we would achieve the same object with less worry and less expenditure of time and money than it is possible with the contemplated amendment of section 375.

I am of opinion that an amendment in clause fifthly and the proposed substitution of the word 16 for 14 is of no use. I would also propose that a further amendment in section 363 may be made by which some protection may also be given to the parents and guardians of girls of 19 years or under. Most of the cases which have come to my notice as a section 30 Magistrate for the last, 7 years are cases of unmarried girls of 16--18 going away with third persons of their own free will. They are because their parents failed in their primary duty of marrying them at the proper time or because they were prone to influences to which they eventually yielded. To enunciate a typical case, a poor father who spends his whole day out in the field and whose wife has died has only a grown up daughter in his house. This girl usually remains all alone with the result that she eventually elopes from home in company of a third person. They go to some distant place where ceremony of some sort of marriage is performed and the girl breaking herself off from her past starts a new life there. The poor father goes to the courts and finds that he has no case. He is sorely disheartened. He blames the administration and the legal systems that are in vogue. He does not spare the courts. He is disgusted with his lawyers. Also law does not help him. The girl who has once left his abode does never return home. He asks to himself, "Have I no control over my own offspring? Have the laws come to such a pass that nobody can afford me any protection?" In this way human misery is multiplied and dissatisfaction against the laws and the administration continues to swell.

I can cite several instances in which prosecution could not satisfactorily prove that the girl was below 16 and when the girls were little above sixteen and the law afforded no protection to the parents or their guardians.

I remember of a case. A girl disappeared from home. Her father instituted a report before the police. The police kept the case pending for about

six months and no clue of the girl was found. After three years it was discovered that the girl had been taken on the other side of the river to another district where she had been living in the house of a Jat. The case in the court could not succeed because the girl was not proved to be a minor at the time she was removed away from home, but the scene in the court was heart-rending. The mother of the girl was weeping so bitterly that words got choked in her mouth. The father of the girl did not find words enough to express his sorrow and disappointment and the girl openly defied both of them saying that as they refused to marry her, therefore, she had gone away from home and had married a man with her own free will or consent.

You may not protect guardians and parents of girls above 18, but we must give protection to those guardians and parents whose wards appear to be of a young age and I would suggest that we should penalise the removal of a child under 18. This offence, however, can be considered as much lighter as compared with the present section 363. I would propose that removal of a minor under 16 should as now remain punishable with seven years but the removal of girls under 18 should also be made a separate offence and should be made punishable with one or two years' imprisonment of either description to which fine may also be added. This new offence would also be triable by a first class Magistrate like the present section 363. If we introduce this legislation we would be reducing a great deal of human misery and we would be opening our doors to a large body of really afflicted and miserable parents and guardians.

No useful purpose would be served by introducing changes in section 375 which are calculated to penalise a sexual intercourse with a girl under 16 whether the intercourse is with or without her consent.

There are very few cases of rape with minors in this district and the present law is quite sufficient to meet the needs of the society as constituted at present. To prove the offence of rape Courts usually rely upon circumstances and I have known of no case which would not otherwise come under the definition of rape, but which has been made so in view of the amendments introduced in section 375 in the year 1925 or in other words I know of no case in which an intercourse was held to amount to rape merely on the ground that the girl raped was under 14 years of age.

**Written Statement, dated the 11th August 1928, of Mr. R. L. TORA,
B.A., LL.B., Kapoor Street, Gujranwala (Punjab).**

1. There is no doubt appreciable dissatisfaction with the state of law as to the Age of Consent, but owing to various reasons, the chief amongst them being the ignorance and illiteracy of the masses resulting in lack of organisation of any kind, it does not assume any tangible form. The newly married girls who are the victims of such outrages—we may well call premature consummation as an outrage—are generally shut up within the four walls of their husbands' houses and so do not find any opportunity to voice their feelings of resentment, and even if they get it a sense of modesty prevents them to open their mouths in feeble protest. The man who is the active agent in such cases has no fine feelings over the affair and does not feel the sting of his conscience which is blunted in my province, so far as relation between the sexes is concerned; except of course in the case of the educated community in which 80 per cent. young men feel the responsibility of the sacred ties of matrimony. It is this class which sorely feels the necessity of raising the age of consent, because they realise the horrible effects of early consummation. It is true that owing to a lack of means they do not raise their voice of protest in a manner in which they ought to. Provided it is coupled with propaganda in its favour by public bodies the proposed change would not raise any protest from the ignorant masses and even if a feeble voice is raised by them it would die a natural death before this wholesome reform.

So far as my province is concerned the general opinion⁶ would welcome the proposed legislation.

2. Briefly stating the reason why an advance should be made on the existing law are:—

- (a) It would check many a social evil now prevalent as a result of early consummation and would prove a stimulant to the movement in favour of child marriages.
- (b) It would protect many a girl from falling victims to many a disease peculiar to their sex and thus save them from early graves.
- (c) Infant mortality would decrease as the pro-creation of weak and sickly children who are the result of an early and premature cohabitation, would be checked to a degree.
- (d) It would have a healthy influence over the general tone of social morality.
- (e) It would to a degree check the crimes connected with women.

3. Yes, such crimes are very frequent amongst the masses. In fact more than 50 per cent. of cases in criminal courts are related to such crimes. Besides, raising the age of consent to 16 years as well raising the marital age to the same period and making the screw of Law with regard to these crimes more tight, we can check them to an appreciable extent. In my province, however, the number of crimes would still be greater than the other provinces, because the number of women in it is much less than the male population and this fact more than any other is responsible for the high rate of percentage of such crimes.

4. I think not in the least in my province. Raising the age of consent in case of marital offences would not in itself be of much use; unless it is supplemented with the Law as suggested by Mr. Sarda. Owing to the social system prevalent at the present time it is almost impossible to bring such cases to light. Legislation prohibiting child-marriage must be undertaken and enforced in spite of the public opposition if any tangible result is to be achieved in this direction.

5. Thirteen amongst the Hindus and 14 amongst the Mohammedans. The difference is due to the good physique and better health of the muslim girls and the food that they consume.

6. They are common amongst the low classes and do not come to courts.

7. There is no such injunction in the Hindu religion as far as I know. Hindu scriptures are deadly against child-marriages. The prevalence of such marriages owes its origin to custom which came into force in the mediæval times owing to various reasons.

8. No such custom prevails in the Punjab. There is, however, a ceremony called "Ritan" performed when the girl becomes pregnant for the first time. From the facts that I have gathered about it I can say that most of the girls become pregnant between the age of 15 and 18. The percentage between 14 and 16 is higher than that between 16 and 18.

9. That is for the doctor to say but from the point of view of a layman I would suggest that consummation should in no case be allowed before the girl attains the age of 16 years.

10. Not before 16.

11. From general knowledge I can say that such is the case and the high rate of infant mortality and that of girls between 14 and 24 fully proves that.

12. Yes I do.

13. This question is answered in No. 1.

14. No, they do not. The girls of to-day are not anxious to have children at an early age. They rather like a sufficient time to lapse between the time of their marriage and that of pregnancy. Early pregnancy is looked

down amongst them and were it in their power they would do all to prevent it. Amongst the more advanced a resort is being made to contraceptions.

15. Yes, determination of their age is the chief difficulty. In the majority of cases they have to depend on oral evidence which is always unreliable so far as the question of age goes. Arrangements should be made to maintain Birth Registers accurately. They should contain detailed information. Failure to register such births should be punished. At the present time such registers are most carelessly kept.

16. No. It would be removed considerably if it is raised to 16 years for a girl of that age can be easily distinguished from that of the lower one.

17. Yes they must be separated. In case of marital offences the punishment should be up to 4 years' rigorous imprisonment, and fine. In the case of non-marital cases it is already sufficient. The courts should take a serious view in cases in which the crime is proved to the hilt.

18. Marital offences should be tried in a summary manner in which the formalities and technicalities of Law should not be the guiding factors of such trials. They should not be open to the public and their proceedings should not be reported to the Press.

19. In case of marital offences no such safeguards are needed beyond those that already exist. In non-marital offences, the complainant as well as the witnesses (in case of improper prosecutions) should be severely punished.

20. Both are supplementary and each would be useless without the other. The age fixed in both of them should be the same and must not be less than 16 years.

21. Certainly on the former. The latter would follow its tardy course eventually.

**Written Statement, dated the 11th August 1928, of Mr. H. S. VERMA,
I.S.S., Honorary Joint Secretary, Arya Samaj, Simla.**

1. Yes.

2. (2) The circumstances which justify making an advance on the present law are:—

- (i) Growing physical degeneration of the coming generation.
- (ii) High rate of infantile mortality.
- (iii) Growing high death rate of women at child birth.
- (iv) Better understanding by both the sexes of sexual relations.

3. Crimes of seduction are frequent in this part of the country. Owing to preponderance of Indian State area in the Simla District, the effect of 1925 legislation raising the age of consent to 14 years cannot well be judged in this District. There is however no doubt that this raising of the age of consent has mitigated to a large extent cases of rape outside marital state or improper seduction of girls for immoral purposes.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years has been effective in protecting married girls against cohabitation with husbands within the prescribed age limit:—

- (i) by stimulating public opinion in this direction, and
- (ii) by putting of marriage beyond 13 years of age. If the age of consent within marital state is raised to 16, it will certainly be effective in putting of marriage till that age in the majority of cases.

5. The usual age at which girls attain puberty in this part of the country is 14—15 years—sometimes later—owing to the cold climate of the place. There is no difference in this state of affairs among the different castes or communities in this District.

7. The practice of early consummation of marriage before or at puberty may to some extent be attributed to religious injunctions which some people still believed but this is fast disappearing. Early marriages when celebrated naturally bear the result of consummation.

8. Gaona is usually performed in this part of the country. It generally coincides with the consummation of marriage. It is generally performed about the time of puberty but in certain cases, specially in the case of people belonging to the old school of thought, it is performed before puberty.

9. The attainment of puberty is no indication of physical maturity to justify consummation of marriage. Three years after the attainment of puberty or 26 months after the appearance of first menses is a girl physically fit for consummation of marriage without injury to her health and that of her progeny. This age is generally fixed at 16 as the appearance of menses begin at the age of 13 among the girls in India. If however this appearance of menses takes place later than 13 owing to cold climate of certain parts of the country or other reasons, the consummation of marriage should correspondingly take place later.

10. A girl in India is competent to give intelligent consent to cohabitation with due realization of consequences not before the age of 16.

11. It is not possible to give particular instances of the kind referred to in the question. There are however many instances to show that cohabitation before puberty resulting in pregnancy has caused irreparable loss to the health of the mother. Such children seldom survive and if they do, they are in such bad state of health that they cannot live long.

12. Early consummation and early maternity are certainly to a large extent responsible for high maternal and infantile mortality. Other results in the shape of low intellectual power of the progeny and their low state of health are the natural results thereof.

13. Yes. The public opinion is generally in favour of the age of consent in marital state as well as extra-marital state being raised. The educated classes are in block in favour of it while the others are not lagging behind.

14. No. They are also sharing the views of the men.

16. Yes. The age of consent should however be raised to 16.

20. Higher age of consent for marital cases will be more effective inasmuch as the question of consummation of marriage will not arise if the marriage itself does not take place before the age of 16. This is the general public opinion.

21. Present state of affairs do demand the strengthening of the penal law to secure the object in view. This may not however be necessary after the lapse of some time. Social reform by means of education and propaganda must in all cases be resorted to.

Written Statement, dated the 11th August 1928, of Mr. CHAIT SINGH, Secretary, Guru Dawara, Police Lines, Gurgaon.

1. There is some dissatisfaction with the state of law as it stands. As girls are enticed away by ruffians and they cannot be punished as guardians cannot be traced and the girls are influenced by the persons with whom they are found.

2. As the health of females is affected very badly by their early becoming mothers or by having early intercourse with them and now-a-days serious diseases have been traced in city lives and consumption has been widely detected in young wives, it is necessary that some check should be made in allowing the couples to cohabit to save the country from devastations; it is necessary to raise the age of consent.

Secondly, as enticing away of girl has become a curse of the society by communal tension, it is proper to raise the age of consent, so that the rogues may know that even the consent of the girls would not save them.

In India death rate in females is greater than that in males and wives have been becoming a valuable thing to have. In poor and low society they are married at a low age. Hence the traffickers in women are encouraged to seduce females and pass them off as their relations so it is necessary to check them by raising the age of consent so that immature girls may not be seduced.

3. The crime of seduction has increased very much and as rape cases are not readily reported there cannot be said to be any indication of appreciable increase but still they too are on the increase.

4. The raising of age has not in any way affected the public. The steps taken should be to penalize early marriages, secondly severely punishing seducers, thirdly prescribing such courses in schools as show the evils of early sexual intercourse. Fourthly by raising the age of minority in criminal matters to the same level as in civil contracts, i.e., 18.

5. Sixteen years. In low castes as prostitutes or others who live together their girls become mature earlier than those who abstain from this and moreover it depends upon the Society.

6. Cohabitation is very rare before the girl completes 13 years and before puberty in higher grades of society but amongst lower grades of society it is common before puberty.

7. It is due to custom and not any religious sanctity that early consummation of marriages takes place.

8. The Gaona is usually performed in this part of the country. It coincides with consummation of marriage.

9. The attainment of puberty is not sufficient indication of physical maturity. Medically the womb develops completely at 24 or 25 but it can sustain a child at the age of sixteen, hence to allow full development to it sexual intercourse before the age of 24 should be discouraged and not allowed before the age of eighteen at all.

10. In India in these days girls are competent to give an intelligent consent to cohabitation at about 17 or 18.

11. I have come to know that a girl suffered from tuberculosis and died while she was about 21. In one case there were abortions generally and after several abortions one girl was born but that too is a sickly one.

12. I consider early consummation is responsible for mortality and development and education of girls is greatly hampered with.

13. There is a traceable development of opinion in educated classes only.

14. Women in this part of country favour consummation of marriage just after Gaona ceremony.

15. No such thing has come to my knowledge.

16. Yes.

17 and 18. There is no necessity for separating the marital offences from extra-marital. Only change in procedure would do the purpose of checking interference in social life by police, that is police should have nothing to do with the commission of marital offences. Some think that interference by higher police grades would check the encroachment but I think it would not do, as superior grades generally play into the hands of the inferior grades. In the trial of marital cases qualified and experienced judges should have jurisdiction to try the case. Committal procedure should be done away with. Only magistrates should conduct investigation in such cases. Police should have nothing to do with such cases and trials should not be open.

19. No further safeguards are necessary only that superior police officers should punish severely those inferior who profit by suppression of such cases.

20. The fixing of minimum age of marriage would encourage corruption in the executive as it is done in States. People take false medical certificates to get their children's marriage ceremony celebrated. But fixing the age of consent would not interfere with their sentiments and no hostility would be shown to that, it would be consonant with public opinion.

21. Strengthening of the penal law is very necessary to secure the object in view, else it would take centuries to get it done by means of education and social propaganda and even after lapse of centuries there would be found persons of low eccentric minds who would not care a bit for public opinion for their mean and selfish ends. There are communities in India who do not think it a disgrace to offer their daughters and wives to more favoured curses of society who indulge in licentious habits and there are persons who are ready to sell their daughters for marriage and there are persons who buy them and as there is scarcity of females in India it is very difficult to put a stop to it.

Written Statement, dated the 11th August 1928, of Dr. (Mrs.) EDITH ANNA WYNN COWIE, L.R.C.P.S., Physician in charge, St. Andrew's Mission Hospital, Gawalmandi, Rawalpindi.

1. Cannot give any opinion.
2. (1) If the age of consent were raised it should I consider raise to sense of responsibility for these offences, in both man and girl.
3. Cannot give any opinion.
4. To make the amendment more effective every opportunity should be taken to educate fathers and mothers, etc., through them young children of both sexes in self-control of all kinds.
5. I think girls in this part of the country and elsewhere vary very much. Puberty may commence as a rule at any age between 12 and 15.
6. Cohabitation is common.
 - (1) Seldom before puberty, but occasional.
 - (2) Very general.
 - (3) May be before 13.
7. I should attribute early consummation of marriage more to social custom than to religion.
8. No opinion.
9. I do not consider that on attainment to puberty, sufficient physical maturity exists to justify the consummation of marriage. A girl should be allowed or compelled to wait for at least 2 or 3 years between attainment of puberty and the consummation of marriage for the sake of her own and her children's health.
10. Individuals differ very much.
11. Cases seen in medical work—
 - (a) A young woman of 20 or so, married (*i.e.*, living with husband) for the past 8 years, complaints of complete sterility. History of cohabitation immediately on appearance of menses. No physical defect in the girl. Common case.
 - (b) Mother of 3 children. Mother's age 14 years. Children all feeble and rickety, mother herself stunted and exhausted and lacking intelligence to manage house and children.
 - (c) Septic condition of genital organs, following penetration, in immature girl, general health of girl threatened, and fear of injury leading to future sterility.

N.B.—The complaint of sterility or partial sterility (*i.e.*, one child followed by no more) is one of my usual every day occurrences.

12. Responsible for sterility (see answer 11). Also for intellectual and physical deficiency due to abnormal excitation of the sexual feelings and ideas, at the expense of others (i.e., other feelings and ideas).

13. No opinion.

14. Woman, i.e., mothers and mothers-in-law if remonstrated with, say "we know early marriage is unwise but it is the custom of our people, what can we do?"

15, 16, 17, 18 and 19. No opinion.

20. (a) I think a higher age of consent should be fixed.

(b) I cannot say.

21. Penal legislation is needed as well as education, and social propaganda; neither can be relied on alone.

Written Statement, dated the 12th August 1928, of Mr. LACHHMAN-DAS JAWN, B.A., LL.B., Pleader, Secretary, Arya Samaj (Gurukul Section), Jhang, Maghiana.

1. We are not at all satisfied with the state of law as to the age of consent as existing at present. We ardently wish for an advance on the present law.

2. (2) The age limit under the present law is unsatisfactory for both marital and extra-marital cases.

Cohabitation with a woman of less than 16 years of age, though her age be over 14 years, is injurious to her health and prejudicially affects her progeny, physically and intellectually.

Early marriage, early maternity are a great obstruction in the way of increasing demand for female education.

For extra-marital cases, the present age limit is altogether useless. In such cases, we seldom meet with cases of rape with a woman under 14 years of age; while cases are often met in which unintelligent consent to cohabitation is obtained of a girl of an age between 14 and 16 years.

In cases of seduction, the seduced girl is mostly over 14 years of age. To check this, the age limit must be raised.

This is also the reason, why age limit must be raised in marital cases also. A girl below 14 years of age, would never give even an unintelligent consent to cohabitation. It is mere cruelty to allow a husband to rape with a wife under 14 years of age.

3. As stated above, outside the marital state, cases are frequent in which girls over 14 years are seduced for immoral purposes, or their consent is obtained for cohabitation. Other cases of rape are rare.

Of course, in the marital state, we meet with many cases where girls even below the age of 13 are raped by their husbands.

As mentioned in answer to Question No. 2 even the present amended age limit is useless for extra-marital cases. It must be raised.

4. The amendment of 1925 has had no practical effect in any of the three directions indicated in the questions. It appears rather difficult by the force of law alone to restrain husbands from cohabiting with their wives of tender age. The best thing would be to pass "Sarda's Bill" and penalise the marriage of such girls.

Leaving Sarda's Bill aside the present law requires improvement in order to be properly enforced. The difficulty lies in the detection and in the proof of the crime. Parents and guardians who are the best persons to know of it effectively prevent its detection.

Lambardars and members of the municipal committee should be entrusted with the duty of lodging complaints of such crimes with the magistrates and

they should be exorted to bring such cases to conviction by rewards and penalties.

A duty should be cast upon the parents and nurses attending the pregnant girls to give information of such crimes. It should be made punishable for them not to give such information.

Lastly, it is a very bare fact that people even educated people leaving the lawyer class are absolutely ignorant of the law that it is punishable for husband to cohabit with a wife below 13 years of age. People have come to know of this law now only through this method of eliciting public opinion as to making a change in the law. Writing as I am, while sitting in a village, I can definitely say, that the village people are altogether unaware of the law even uptill now.

It would be well to give full publicity of the frame of law after it is passed. With regard to rural areas I can say confidently that if legal consequences of early consummation of marriage are made known to the people the fear of law would effectively prevent them even from marrying infant girls.

5. The girls, here, attain puberty in their 14th year after the completion of 13th year of their age. In rural areas, the age of puberty is a bit higher, it being when the girls near the completion of 14th year of their age. Except this, there are no other differentiations.

6. In marital cases husbands do cohabit with their wives who have not attained puberty or even who are below 13 years of age.

Cases of cohabitation with strangers occur only when girls are over 14 years old.

These cases never come to court unless in extra-marital cases the girl is also taken out of the custody of parents or guardians.

7. In our part of the country religious injunction is not at all the cause of early consummation of marriage.

8. The meaning of Gaona or Garbhadan is not quite clear to us. In this part of the country only a few days after the marriage (this period is invariably less than a week) a *phera* ceremony is celebrated. After that the husband is free to cohabit with his wife though she be a child.

9. The attainment of puberty is not at all a sufficient indication of physical maturity to justify consummation of marriage. Such consummation is justified only when the girl has completed her 15th year of age, that is, more than a year after she has attained puberty.

10. A girl is fit to give such a consent only after she has passed 16 years of her age.

11. Some specific instances can be given in which females between the age of 13 and 14 after giving birth to children soon died. In a few of them, the children also died. In other in which the children survived most of them are weak and bad in health.

There is another woman, who at an age between 13 and 14 years gave birth to a child. Both the child and mother are living but very bad in health. The mother who is now a pale and sickly girl was formerly very healthy.

We also know of an instance of a woman who was a cohabited with while under 13 years. The result is that her monthly course is so irregular that she is continually bleeding and in spite of all remedies the blood does not stop.

12. Certainly. Leaving aside the physical aspect, early maternity is an hindrance in the way of female education. The result is that uneducated mothers, besides making an unhappy home, cannot properly look after the health or education of children. Besides the weak intellect of mother has an hereditary effect on the intellect of children.

13. As already submitted people are not aware of the law as contained in Section 375 of I. P. C., or the amendment made in that law in 1925.

Of course, irrespective of the law already existing, people in general are desirous that there should be a law to check early marriage and early maternity.

14. No. Some of them may be said to wish for early marriage, but none its early consummation.

15. As already submitted such cases do not come to court.

16. Certainly the difficulty would be materially reduced if the age is raised. Persons in authority will be able to tell from the appearance of girls that at least they are below a certain age. The signs of puberty, which appear at the age of 14, can be good indication of age for this purpose, if the age is raised to 14 or above.

17. The two must be classed as different offences. The punishment provided for extra-marital cases in the proposed Bill is right. For marital offences, it should be imprisonment for years amounting to the difference between 17 years and the age of girl with whom the offender cohabits. In the case of cohabitation with a girl below 13, it may be of either description. If the girl is above 13, it should be simple.

18. Some suggestion of procedure for marital cases has been submitted in answer to Question No. 4. In other respects, the procedure laid down in the proposed Bill is right.

19. Some safeguards against collusion have been submitted in answer to Question No. 4. Besides, it should be made legal to subject a girl to medical inspection even against her will.

20. As already submitted in answer to Question No. 4 Sarda's Bill if passed would be more effective. That Bill would also be in consonance with public opinion here. People do not like others to pry into their sexual secrets.

21. In order to attain such object, it is always preferable to rely on the progress of social reform, but as yet public opinion is not strong in this direction and child marriage is doing a great harm to the country, law should be strengthened this way, till education and social propaganda have created a strong public opinion against child marriages.

Written Statement, dated the 12th August 1928, of Mr. THAKUR DAS SAHGAL, Joint Secretary, Arya Samaj (College Section), Jhang.

1. Yes. There is no reason why there should be any difference in the age of consent in the case of a husband and a stranger. The prejudicial effect on the health of the girl is the same in both cases. The remedy lies in the fact that the age of consent should be the minimum age for the marriage of a girl.

2. The advance in the present law should be made for the following reason :—

Sexual intercourse at the present age of consent is calculated to result in deterioration of girls' health and weak progeny.

3. The crimes of seduction or rape are not frequent in our part of the country.

4. No. In order to make it effective a minimum age for marriage should be fixed.

5. 14 years. There is very little difference in different castes or classes of society.

6. (1) No.

(2) Not so common.

(3) No.

Such cases come to court very rarely.

7. No. This practice is solely due to superstition.

8. No.

9. No. 16 years is the age in which consummation can do no injury to girl's health and her progeny.

10. Sixteen years.

11. No.

12. Yes.

13. Yes. Among the educated classes only.

14. No. They do not.

15. Yes. The name of the child should be recorded in the birth register.

16. Yes.

17. No, as far as the offence is concerned and "Yes" as far as the procedure and punishment are concerned. Ten years' maximum punishment of rigorous imprisonment for extra-marital and two years' single imprisonment for marital offence.

18. Yes, marital offence should not be cognizable.

19. As in 18 above.

20. The latter would be more effective.

21. Former is preferable to the latter.

**Written Statement, dated the 12th August 1928, of Mr. F. B. POOL,
Sub-Divisional Officer, Kulu.**

1-2. The people in Kulu are so backward and illiterate that they are wholly ignorant of the amendment in the law. Their morals are exceedingly low; and I would estimate that at least 75 per cent. of the people suffer from Syphilis Gonorrhœa. From my observations I have found that it is becoming increasingly difficult for parents to bring up their children. A large number of them are born so puny and delicate that they die at a very early age. Their death in most cases is attributed to the very common excuse put forward that they will not drink their mother's milk. As a matter of fact it is nothing but the inherited disease from their parents that is the real cause of their deaths. The customs of the people are so that nothing else can be expected unless and until they are educated. They are at present an illiterate mass of humanity. They do not leave Kulu, and do not know (and careless) of what is going on outside Kulu. They are practically shut off from the outside world. For the first time last year motors came up to Kulu and the sight of them caused a mild sensation.

The people in the upper part of Kulu are habitually given to drink. They indulge in it freely at the numerous fairs that take place. These fairs attract hundreds of people of course when drinking is the main occupation passions are let loose later—all fairs are sinks of inequity—the prevailing idea of attending is to secure sexual intercourse, old and young indulge in it freely and fairly pullidly.

No woman considers it a disgrace to attend any dispensary or in the presence of men, whether stranger or not, to ask for medicines either for Syphilis or Gonorrhœa as the case may be. Neither do the men condemn this.

Among the lower classes in Kulu for instance the Kohlis, Lohars, Chamars, Dagis, Naths it is common for them to encourage the private prostitution of young girls and secure a living thereby. Among these classes the elderly women and men act as pimps and seduce girls of very tender age to cohabit with grown up men for a very small consideration. I think it is a fact which cannot be disputed, that all girls over 12 and under 18 who have not been married have all had sexual intercourse. They seek it. It can safely be said that virgins are an absolutely unknown quantity in Kulu.

Kulu proper itself is a very hilly tract. Its height varies from 2,500 to 11,000 feet. It has much colder climate than other parts of India and consequently girls take longer to obtain puberty here.

Besides this, there is a very vicious custom prevalent. It is said to be a religious one. I do not know the authority on which it is based, but it exists. The custom is this, that if any woman dies while she is pregnant, the husband is immediately outcasted and has to stay away from home for at least 3 months. He is only allowed to come home after he has purified himself at some purification ceremony supposed to be made down at Hardwar. Now when there is a fear of a pregnant wife dying the husband in order to escape being outcasted and undergoing other formalities, calls in the village *dais* and with their aid forces the child out of the mother's womb. Such a brutal proceeding usually proves fatal to the mother. It is difficult to prove these things, but none-the-less they do exist.

Marriages in Kulu take place when the girl is between 12 and 16. The mothers are not in favour of such marriages at this early age, but in view of custom and the widespread immorality consider it safe to have their girls married. If a prospective husband is known to be suffering from disease (Syphilis or Gonorrhoea), this even is not considered to be an obstacle and the poor girl is given in marriage. In the natural sequence of things she gets Syphilis in a very short time and dies. I quote a case at end :—

The Kulu people are so backward and illiterate. They have very little inclination to be educated. They are exceedingly filthy.

For these reasons I think the age of consent ought to be advanced.

3. Rape in the ordinary sense of the word, is not common, *i.e.*, against the wish of the girl. But rape through seduction or by consent is exceedingly common. The raising of the age of consent to 14 has not in any way succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. The amendment of the law is practically unknown in Kulu. In rape cases it is usual for parents to demand money and it is only in the event when their greed is not satisfied that they resort to making complaints in Courts. The law cannot be made effective unless the people are first educated and made to realise their obligations to society and to their future generations.

4. No. As I have said above the law is practically unknown in Kulu and the old customs still continue. There is no public opinion in Kulu. The only remedy in a backward track like Kulu is to have all marriages registered by the Negi on payment of a small fee. Failure to so register should be punished by fine by executive order of the officer in charge of Sub-division. Regular registers should be kept by Negis and filed in the Tahsil after completion.

5. Amongst all classes, I think, puberty is obtained among girls between 15 and 16.

6. Cohabitation is common among all the lower classes and Zamindar Kanaitis before puberty or after puberty and in a few cases before the girl attains 13 years.

This is due to the widespread immorality among the people and to their backwardness due to their isolation and want of education.

7. No. So far as I know, there is no religious injunction urging the early consummation of marriage among any of the various classes, *i.e.*, Kohils, Lohars, Dagis, Naths, Chamars, Kanaitis, Rajputs and Brahmans.

The Mohommadan population in Kulu is negligible.

8. "Gaona" or Garbhadhan ceremony is unknown in Kulu.

9. In this hill tract, I think, most girls are fairly well developed physically at 15 or 16 and at this age there would be no objection to their marriage.

10. For other parts of India the circumstances are so vastly different. I can only speak with regard to Kulu and here, I believe, a girl at the age of 16 could give an intelligent consent to cohabitation.

11. I have not come across any such cases.

12. Yes, I do. It is only to be expected that when girls are given in marriage at an early age and to diseased men, the offspring is not going to

live. It is fairly common in Kulu to see new born infants who cannot be reared; they are so puny and miserable and quite a number who live are idiots or are deformed.

13. No public opinion at all develops or is likely to develop.

14. They prefer it.

15. No. The opinion of the medical officer along with the birth entry in the chaukidar's register is sufficient.

16. No.

17. Yes.

18. I would favour the present procedure.

19. As all marriages here are communicated immediately after completion of ceremony, I would suggest that it be made penal for parents or guardians who give their girls or boys in marriage before the prescribed minimum age. All marriages should be compulsorily registered and at least 10 days' notice given to the Negi of the Kothi before marriage is celebrated.

The people in Kulu are very united, there is certainly no fear of improper prosecutions or extortion.

20. I should think penal legislation fixing a higher age of consent is likely to be more effective.

21. Strengthening of the penal law would be preferable. Progress by social reform, i.e., by education and social propaganda would take years and years to be effective. There is certainly no sign of it at present. Education is extremely backward, and if in the present state of immorality the protection of minor girls is left to social reform, in a tract, where public opinion is not manifest, the plight of the future generations is simply terrible to contemplate.

About 4 or 5 years ago a young Kanet girl Kabli of Manali village was given in marriage to one Ludru. At the time of the marriage, Ludru was suffering with a very bad go of Syphilis. A year after the marriage Msstt. Kabli died of Syphilitic sores, under her chin and near the jugular vein. Ludru is still alive and has married again.

Written Statement, dated the 13th August 1928, of Rai Saheb GANGA RAM, M.L.C., Ambala City.

1. Yes.

2. In my opinion the daily increase in the number of seduction and rape cases justifies for making some advance on the present law.

3. Yes, crimes of rape and abduction are increasing.

4. Amendment of 1925 has not been effective. The putting off marriage beyond 13 years will be better effective.

5. 13 years.

6. Generally soon after puberty; such cases do not come to court.

7. There is no such clear authority though the orthodox Hindus believe that there is some injunction in scriptures the girl should be married before puberty; however this idea is dying out and the educated people marry girls generally at the age of about 14 or over.

8. Gaona ceremony is performed generally after one year of marriage.

9. I think attainment of puberty is a sufficient indication of physical maturity.

10. In my opinion at 15 years' age.

11. Yes, in several cases between twelve and fourteen years age injuries are caused.

12. Yes.

13. Yes, in general.

14. Generally not.

15. Yes, I would suggest Legislation regarding the record of birth should be more strict.

16. Yes.

17. Yes, simple imprisonment up to three months and fine up to 1,000.

18. Yes, to be tried by a Board of three non-official members to be nominated by District Magistrate.

19. I would suggest that cognizance of the offence may be taken by the Board suggested in answer number 18.

20. I prefer the Legislation fixing the minimum age and the same would be in consonance with public opinion in part of our country.

21. I would suggest both the means, i.e., some legislation in a mild form and social propaganda.

Written Statement, dated the 13th August 1928, of Mr. RAM CHANDRA, Secretary, Arya Samaj (Gurukul Section), Mianwali.

In reply to your circular letter regarding age of consent, as directed by the Arya Samaj Mianwali, I beg to write the answers of the questionnaire as under:—

1. Yes. Because the age of consent was low.

2. The age of consent may be advanced because the old law of age of consent is detrimental to national health.

3. Yes. Crimes of Seduction or rape are frequent in this part of the country. The amendment of law made in 1925 raising the age of consent to 13 years has not succeeded in preventing cases of rape because even then, the age of consent is too low to be taken as a wholesome connection among the parties.

4. No. The amendment has not succeeded in protecting married girls under 13 against cohabitation with their husbands. We would like to propose that no marriage should be sanctioned before the girl has attained the age of 14.

5. The usual age at which girls of this part of country attain puberty varies between, 15 to 17 years. The above is an average calculation for all nationalities.

6. Yes. Cohabitation is quite common when a man happens to get a girl. The record of the work of the courts at Mianwali shows that such cases are numerous.

7. No, there is no such religious injunction which should penalize if the marriage is conducted after puberty.

8. There is no such ceremony as "Garbhadan" given a ceremonial shape prevalent in this part of the country.

9. No, 2 years after maturity may be taken a safe time for marriage.

10. 18 is the ripe age at which girls would be able to reflect in their future.

11. Yes, there are numerous cases in which the girls have lost their health or fatally injured themselves as a result of early marriage. We don't want to cite instances here because such people would resent having their names inserted in this category.

12. Yes. Early marriage is responsible for both high maternal-infantile mortality and also for the arrest of intellectual and physical progress of the nation.

13. The intelligensia and other enlightened—but illiterate public are quite in favour of the advance of age of consent after 16 or 17.

14. No. Except the women of orthodox thoughts who are quite advanced in age.

15. Such a difficulty has never been known in this part of the country so far as the connection of the girl is concerned with her own husband.

16. The difficulty must be reduced if the age of consent is raised to something like 16.

17. Marital offences would be unknown if the age of consent rather the marriage is performed after 14. So far as extra marital crimes are concerned we would like to suggest that in order to minimise the national crimes the punishment should be exemplary.

18. As mentioned above marital offences would be unknown if the age of consent is raised and regarding extra marital offences they should be dealt with severely under a hard section.

19. The only safeguard we can suggest is due moral training to the masses.

20. If permission of marriage is given say at the age of 13 and age of consent is raised to say 15 it will all be a farce, because in this part of the country no married couple at any age would remain without sexual intercourse. Our suggestion would be that age of consent should be as much as the minimum permits of marriage which should be not below 14. The law of age of consent should be utilized in extra marital offences and the minimum age should be utilized in marital connections.

21. By both. The penal law should be made as vigorous as possible and no stone should be left unturned in enlightening the public by the progress of social reforms by means of education and social propaganda.

Written Statement, dated the 13th August 1928, of Mr. M. GHOLAM-SADIQ, B.A., LL.B., Bar-at-Law, President, Municipal Committee, Amritsar.

1. The country at large is quite indifferent, but the spread of the Education, has created dissatisfaction, against the existing law. They want to raise the Age of Consent. My own view is that it should be increased. I treat it a cruelty to the girls to send them to marital life, so early.

2. My own view is that early Marriages in this country were started on sentimental grounds. People die at early age as a rule in this country. Parents are anxious to see their boys and girls married, for one reason or another. Parents are anxious to see their children getting children during their lifetime. Owing to the hot climate, the girls get developed, and the parents to avoid any unpleasant happenings, wish to see their girls given away in marriage. These sentiments, have with some, taken religious shape but all these sentiments, should not stand in the way of change.

I have said that, to retain the present age of consent is a cruelty to girls. It spoils their girlhood. Just at the time when they should enjoy their paternal roofs they are dragged into another life, in another house, where, whatever be the position, they cannot have the same enjoyment as in the houses of their parents. Their development is much checked, therefore an advance in the present law is desirable, irrespective of the sentiments mentioned above.

3. In the cities, one very rarely finds cases of rape. It may be that they are not reported, which however I doubt. During the 14 years I have been a Public Prosecutor, I have never seen more than two or three cases coming from two Cities, Amritsar and Sialkot. Perhaps this number is also great. Similarly the seduction cases in the cities are not frequent.

In villages, however, the rape cases and the seduction cases are frequent. They are mostly cases of rape on Kamin girls by the Jats. There are many

abduction cases of girls of 14 and upwards. Mostly the cases are where the girl is a consenting party, brought about for one of the following reasons:—

- (a) Poverty of parents, and the girl is seduced by temptations.
- (b) Parents desire to marry her at a place where she does not like.
- (c) Parents not getting a good purchaser of the girl, and keeping her unmarried for a long time.
- (d) General temptations to which her undeveloped mind is amenable.
- (e) Maltreatment by step Mother.

4. The amendment of 1925, raising the age of Consent has been effective among the educated people, and the girls have certainly received some protection against cohabitation. Since this amendment only one case was reported against the husband for cohabiting with his young wife, in Amritsar.

- (i) Consummation has been postponed.
- (ii) There was no public opinion on the subject, but has been recently created.
- (iii) It will certainly improve it by putting off the marriage beyond 13.

5. Attaining of the age of puberty to a great extent depends on the bringing up of the girls. Where girls get good food, etc., the development is quicker, but it can safely be said that in this part of the country the girls attain the age of puberty at the age of 13 or 14.

6. (1) No.

(2) Yes.

(3) Not in these days.

I have already said that since the passing of the amendment, there was only one case in this district where the husband cohabited with his under-age wife. It may be that in many cases husband cohabits with his under-age wife, with the consent of her parents. Such cases, however, can never be found.

I feel, that to make the law effectual, restriction should be placed that the girls should not be married before such and such age.

7. Among Muslims there is no such injunctions.

8. I regret I cannot say anything on the subject.

9. My own idea is that the attainment of puberty is not sufficient indication of physical maturity to justify consummation of marriage. I think the age of 16 is the proper age when a girl can be considered physically developed. I certainly think that early consummation affect the health of the girl and of progeny.

10. 17 or 18.

11. I regret I am not in a position to answer this question.

12. My answer to the first part of the question is in the affirmative. It may be that some deaths are due to defective way of living.

13. With the increase of education among both classes the opinion is certainly developed for the extension of age of consent since 1925. I must, however, admit that this development is limited to educated classes. Poor people are quite indifferent.

14. Women in our part of the country certainly favour early marriages which is chiefly due to the fact that they are anxious to see their girls properly settled during their life time. Ages are not long in this country and this leads to the early marriage.

15. My answer to this question is in the negative.

16. My answer to this question is in the affirmative.

17. In my opinion extra-marital and marital offences should be kept quite different as after all marital offences are merely technical offences,

and the punishment prescribed should be not more than 6 months or fine or both, but in no case more than what it is now.

18. My answer to this question is "No".

19. I am afraid that safeguards beyond those existing at present might create difficulties.

20. In my opinion the minimum age.

21. Progress of social reform by means of education and social propaganda would certainly be best, but there must be some penal law to secure the object in view. I am however not in favour of strengthening it.

Written Statement, dated the 13th August 1928, of Professor RAMA RAM, M.A., Secretary, Arya Samaj, Hoshiarpur.

1. Yes, among the intelligentsia there is a marked dissatisfaction, which is gaining in intensity every day with the state of the law as to the age of consent as contained in Sections 375 and 376 of the I. P. C.

To fix the age of consent at 13 or even 14 is highly unjust to the fair sex and extremely detrimental to the generations to come.

2. In the opinion of the society which I represent, there is not even the slightest justification for retaining the law of the age of consent as it is. In order to prevent early motherhood it is essential that the age of consent should not in any case, be less than 16. One other reason which necessitates the raising of the age of consent to 16 is that India must conform to world opinion on the subject otherwise the verdict of the world will go against India, and the reputation of this country will suffer seriously even if there be not early motherhood.

3. Crimes of seduction or rape are not frequent in my part of the country. The amendment of the law made in 1925, raising the age of consent to 14 years, has done little to mend matters, as it has not received the publicity, which such a measure deserved. I feel convinced that if the Government takes steps to see that every village is properly informed of the enactment of such a law, it cannot but exercise a healthy influence on the public mind. So far as I am aware the Government has suffered this law to remain a dead letter. I therefore propose that such a law when passed, should be translated into all the vernaculars of India and then circulated in every town, village and hamlet.

4. In cases where early marriage takes place (such cases are not too many) cohabitation does not take place for a year or two after the ceremony. In my part of the country child mothers are hardly one in a hundred. But this is not due to the raising of the age of consent by law, for the law never received any publicity worth the name. Credit for this healthy change goes to reforming societies especially the Arya Samaj.

5. In my part of the country girls generally attain puberty at the age of 13, some even at the age of 14. This holds good in the case of almost every caste and community.

6. Cohabitation is not common before and soon after puberty. There are rare cases of such cohabitation. None comes to court.

7. Religion does not enjoin the practice of the early consummation of marriage before or soon after puberty. On the contrary Manu has explicitly laid down, that a girl should search for a husband three years after the first sign of puberty. Manu's shloka is as follows:—

त्रीणि वर्षाण्यदौ चेत् कुमार्यृतमनोसती ।

उर्ध्वतु कालादेतन्मात् द्विनेत महशयनिम् ॥

9. The attainment of puberty is not a sufficient indication of physical maturity. Medical opinion is unanimous on the point that maturity is

attained at least three years after puberty. Even the Hindu medical authority Sushrut supports the view (see Chapter 10, Shloka 47 and 48). Consummation of marriage should therefore take place not before the age of 16.

10. Not before 16.

11. In my village there occurred one such case about 15 years ago. A man about 50 married a girl of 11, when in her 12th year she conceived, was delivered of a male child, who died of rickets within a year, the child-mother got curvature of spine and died of tuberculosis soon after the death of the child.

12. Yes, early maternity, coupled with ignorance, is mainly responsible for high maternal and infantile mortality. Early maternity stunts the bodies and dwarfs the intellects of the people who are poverty-stricken into the bargain. Poverty alone cannot be held responsible for our physical and intellectual deterioration.

13. Yes, among the educated. The illiterate are neither for nor against it. They are not likely to oppose such a legislation.

14. No. Exceptions only prove the rule.

15. None to my knowledge.

16. Yes.

17. I would not separate extra-marital and marital offences.

18. I would not make any.

20. In the opinion of the society I represent and this opinion is based on facts, and familiarity with the people's mode of life the raising of the age of consent is necessary to rehabilitate India in the esteem of the world; but such legislation, I feel sure, cannot effectively prevent cohabitation within the marital state by the husband within the four walls of his own house. Early maternity and outrages on child-wives can be effectively stopped if marriage before the age of 16 is penalised by law. Mere raising of the age of consent will afford little relief to suffering child-wives.

21. Legislation is a more effective and speedier method of achieving this end. Education and social propaganda have already paved the way for such marriage legislation.

Written Statement, dated the 13th August 1928, of Dewan Bahadur DEWAN SOMNATH, District and Sessions Judge, Lyallpore.

1. The ignorant masses have hardly any opinion as regards the age of consent. However, literate people desire that in the interest of the girls the age of consent should be enhanced. They would go to the length of raising the age of consent to the age of majority that is 18 years. The opinion appears to be sound, in that when a human being cannot make an ordinary contract concerning property, why a girl should be considered fit to give consent to cohabitation with her before the age of majority. From the medical point of view also, both in the interest of the girls themselves and the children born of them, the opinion appears to be founded on humanitarian principles. I would not say that there was any dissatisfaction with the state of the law as to the age of consent among the masses who are indifferent but it cannot be gainsaid that intelligentsia are dissatisfied with the present age of consent.

2. In my opinion an advance should be made on the present law regarding the age of consent on grounds stated above. In this country no reform in this respect is possible within reasonable time without the help of legislature. People are disinclined to change the old order of things, however defective and injurious it might be.

3. The crimes of seduction and rape in this part of the country are of a different nature. Force is used in committing rape on persons of grown up girls. The amendment of law in 1925 has resulted in practically nothing.

4. No cases of rape within the marital state have occurred to my knowledge. I would support both the raising of the age of consent and passing of a law putting off a marriage till the girl had attained the age of discretion.

5. At about 12 or 13 years. Probably there is no difference in different castes, communities or classes of society.

6. No cases come to courts but I have reason to believe that cohabitation before or soon after puberty is not uncommon.

7. Religion plays little part in these matters. There is scarcity of women among the agricultural and labouring classes of the Punjab.

8. Gaona ceremony is usually performed in this part of the country among well-to-do people but members of lower classes acquire girls on payment of money and then no such ceremony is observed.

9. At least 16 years if not the age of majority.

10. *Vide* answer to question No. 9.

11. I have not come across any such cases but one often sees young married girls with ruined healths.

12. The children born of immature wives are bound to be intellectual and physical wrecks. This must affect the national progress injuriously.

13. I have answered this question already.

14. Only ignorant women do not object to early consummation of marriage.

15. In 363 I. P. C. cases difficulties are experienced in determining the age of a girl. However, the birth registers and vaccination registers are helpful in this respect. I would propose that the name of the child born or vaccinated should invariably be given in those registers.

16. No.

17. Yes. The punishments proposed appear to be sufficient.

18. I would not favour, in the present conditions of things, that the offence of rape within marital state should be cognizable by the police. There need be no difference as regards the trial of two kinds of offences, but a Magistrate exercising enhanced powers under Section 30 Cr. P. Code should try such cases. The prosecution of culprits within marital state should be left to the various social bodies or private individuals concerned.

19. I have answered this question already.

20. In my opinion fixing of the minimum age of marriage would be more effective. As regards public opinion I have already expressed my opinion. The masses would accept the law without any trouble. I am however definitely of the opinion that the enhancement of the minimum age of marriage should be simultaneous with the enhancement of the age of consent for the purposes of criminal law.

21. As I have remarked before, I would depend on penal law in this country.

Written Statement, dated the 13th August 1928, of Mr. RAM NARAYAN, B.A., President, Arya Samaj (College Section), Rohtak.

1. Yes. There is dissatisfaction as everybody feels the state of deterioration in the physique of the nation.

2. An advance on the present law is seriously desired with a view to check early cohabitation resulting in infant mortality, to raise the standard of the average of life and to strengthen the public health.

3. Yes. The amendment of 1925 was a sure step to reduce such crimes, but the personal idea of honour, and the police indifference, lack of insight and dearth of public propaganda hampered success. Hence to make this

law effective, it is necessary that the spirit and the idea of the law should be fully made known to the public by posters, etc. Public servant societies should be taken into confidence and helped by the Government to report such cases. Girls should be educated to take the help of the law in such cases. Provisions should be made for the Government High Officials to take strict measures against Police, Patwaris, Lamardars, etc., if they are found guilty of hiding such cases or negligent in investigating such crimes.

4. To make the law effective nothing has been done. By postponing the consummation of marriage or putting off marriage beyond 13, the question of a husband cohabiting with his wife does not arise. By stimulating public opinion much can be achieved if public workers are taken into confidence as I have said in answer No. 3.

5. Usually the girls attain puberty at the age of 14 in case of towns and at the age of 13 in villages and outdoor workers. Hence this age differs with different places, castes and communities.

6. (1) Voluntary cohabitation not common before puberty.

(2) Yes. Very common.

(3) Only persons blind in animal passions are victims to such heinous crimes.

Cases of the 3rd type do come to the court.

7. The practice of early consummation of marriage is not only due to religious injunction but to some other baseless reasons, viz., a person in his old age desires to see his little boy married in his life lest he may die before this happy occasion or where there is a deficiency in the population of women, a man of ordinary means always avails himself of such chance and at once gets his son married, etc. There are some persons who, no doubt, are addicted to this practice on account of custom based on an ordinary religious injunction. Ages ago, in the Muhammadan times, it was ordained that those who will not marry their girls before 12, they will go in hell. The book compiled is "Shigar Bodh." Why such arrangement that was in open conflict with the law of Manu—the great law-giver of the Hindus wherein the minimum age of marriage for girls is 16, was upheld is not my business to discuss. But the public had to follow this law and the same practice is being followed by the orthodox and the conservatives. The only penalty prescribed is the *fear of hell*. But the present movements have turned the angle of vision of all sane persons. On one side, this injunction is not binding on all sects and persons—as Arya Samaj, Sikh Sect, Muslims, Liberals, etc., and on the other hand even those who call themselves as followers of such religion, do against this system in their practice. Big Hindu and Sraman Dharm Panchayats are held wherein resolutions raising the age of marriage are passed.

Hence there is no common and strong religious injunction for the early consummation of marriage.

8. "Gaona" is common in this part of the country but now-a-days this practice is being abolished, and it can be said with confidence, that it is doomed to die very shortly. Almost all the persons have realised the worthlessness of this unnecessary custom. Many panchayats have been held in this part of the country to pass resolutions to abolish this custom.

This ceremony is usually performed when the girl attains the age of 15 or 16 years.

9. No. I think that two years after puberty will be quite sufficient for the physical development of a girl. The old sages of India are of opinion that there should pass 3 years after puberty before the marriage is celebrated.

10. No girl before 18 and 19 can be intelligent enough to understand the results of cohabitation.

11. Yes. In many cases, women become unable to bring forth children. In many cases such women get so much lust of passions that they become

prostitutes practically. Such women fall an easy prey to? It is due to such cases that infant mortality is very high in India.

12. Yes.

Illiteracy, crowded population in cities and towns, bad food, poverty, etc., have great detrimental effect on the progress of people, but the chief reason lies in the early consummation and early maternity. The great sage Swami Dayanandji—the founder of Arya Samaj—laid great emphasis on this thing, i.e., on Brahmcharya.

13. Yes. But it is confined only to those persons who are in a position to understand this law and who have the capacity to know the evils undermining the health of the society and have some ideas to eradicate such evils from the society.

14. Yes. But it is due to women's childish love for play and festivities and to their ignorance and short-sightedness. Happy signs are observable in this side.

15. Mainly it rests on the medical certificate to decide about the age. This estimate, though not true to the letter, may be taken to be such for ordinary and practical purposes. If the birth registers are kept on sound and efficient lines and some punishment be provided for any wrong entry, then some difficulty may be removed. Secondly it should rest on the accused to prove the age of the girl and not on the girl to prove her age. The tendency of the Court should be to favour the girl.

16. Yes. It can be easily removed if the age of consent is raised to 15. A girl of 12 cannot be taken as a girl of 15.

17. Yes.

For marital offences—

Illicit married intercourse with wife not under 13 and under 14 years of age.—Imprisonment of either description for one year R. I. or fine Rs. 200 or with both.

If a husband cohabits with his wife being under 12.—Seven years rigorous imprisonment.

If extra-marital offences.—If the girl is below 16 and not under 13 years of age—5 years' rigorous imprisonment or fine Rs. 500 or both.

If the girl is below 13.—10 years' rigorous imprisonment, fine Rs. 1,000 or with both.

18. To be answered by capable lawyers.

20. We are in favour of both these legislations for both of them are inter-related. There is no doubt that the effective measure will be to fix the minimum age of marriage, but to make this marriage law effective and to strengthen the hands of the public workers, this law of Age of Consent will play a very significant and important part in the progress of the nation. What is to become of Mr. Sarda's Bill, no one can foretell. But even if that Bill does not see the light of legislation, then, too, the passing of the Bill of Age of Consent will gain almost the same object as is desired in Mr. Sarda's Bill, for the persons knowing that early marriage will be always dangerous for their sons (for it is just possible, they might cohabit with their child-wife and thus invite punishment) will refrain them from early consummation of marriage. Besides the marital connections, there remains the necessity of checking the extra-marital offences. Every sane person is of opinion that higher the age of consent, the better it is for the public morality.

21. Already referred to in answer No. 2.

The hands of the social reformers and educationists will be strengthened by a strong penal law, for there are only a few persons to be counted on fingers who listen to the simple appeal of morality and pay any respect to the social workers. The ignorant, selfish and passionate persons are guided

and controlled by law. Hence if any moral teaching is backed up by a law, then they have no power to grudge and will easily accept that. To quote an example I may mention that the widow marriage is only possible without any tension for there is a law legalising such marriages and the public workers preach this marriage on the strength of this law. Had it not been so, the panchayats would have created obstructions in such marriages. Hence the framing of this law will be very useful.

Written Statement, dated the 13th August 1928, of Dr. DARBARI RAM, President, Arya Samaj, College Section, Jhelum.

1. Yes.
2. Making an advance on the present law.
3. Yes. No, I am of opinion to raise the Age of Consent to sixteen years in case of strangers and fifteen in case of husbands.
4. Not much. I propose to make the offence a cognizable one.
5. Fifteen.
6. Such cases of cohabitation before puberty are rare but these do not come to courts.
- 7—8. No.
9. No. At sixteen for girls and 24 for boys.
10. At fifteen.
11. Yes. Girl themselves suffer severe physical pain and the progeny is generally shortlived and sickly if cohabitation takes place before fifteen.
12. Yes.
13. Yes. To middle class people both educated and illiterate.
14. No.
15. No. Generally precise official Records and Medical Expert opinion help in ascertaining the exact age.
16. No.
17. Yes. Seven years and two years.
18. Both to warrant cases.
19. Yes. Marital cases to be made non-cognizable.
20. Yes raising the age of Consent.
21. Yes.

Written Statement, dated the 14th August 1928, of Mr. UDHO DAS, Secretary, Municipal Committee, Ferozepore.

1. Yes, there is dissatisfaction as to the law regarding the Age of Consent as contained in Sections 375 and 376 I. P. Code.
2. The age should be raised and an advance on the present law ought to be made. In clause 5th, Section 375 the age should be raised to "Sixteen" instead of "fourteen" (as is entered in Sir Hari Gour's Bill) and in the Exception "fourteen years of age" should be substituted instead of "thirteen" Dr. Gour's Bill No. 376-A should be adopted. It is necessary in the interest of physical development of mankind, to raise the standard of morality, to create healthy public opinion inside and outside India, to prevent injury to progeny, to the girl themselves, and to make the nation healthier and stronger.
3. Crimes of seduction or rape are frequent in our part of the country. The raising of age to 14 has not prevented or checked this though might have reduced it to some extent.

The Age of Consent should be increased to sixteen and for marital relations it should be increased to fourteen years and for kidnapping and abducting cases the age limit should be raised to 18 years. The general public opinion now exists is that marriage should be performed at an advanced age of not less than 18 years or more, and this will check the cohabitation at the age of 13 years. It seems shocking that any husband may have cohabitation with his wife at 13. The three points 1, 2, 3 might have also checked cohabitation at 13 years within marital relations, but the public opinion has effected this much more. Therefore in order to make it more effective legislation should be resorted to for increasing the Age of Consent as is proposed by Dr. Gour.

5. At the age of 14 ordinarily, it may vary according to the state of society and breeding and diet may also affect this. But this should not reduce the age of consent as above suggested.

6. At present it is not, though it may be rare in illiterate and ignorant classes or may exist in lower strata of society. Such cases seldom come to courts. Even if it occurs, it is not brought to court.

7—8. No.

9. No. A girl at least at the age of 18 years may develop physically as to justify consummation of marriage though personally speaking I will prefer it to 20 years for consummation of marriage, without injury to her own health and that of her progeny.

10. At least at the age of 18 years. This age is as given in the majority act.

11. This happens in very many cases and we find girls losing health and their children becoming very unhealthy.

Before 18 if consummation of marriage takes place and birth to children given many womb diseases spring up. Girls become very weak and become weaker on each delivery and become liable to still and very many other diseases. They are not able to cope with sickness and are liable to succumb to these owing to early loss of vitality.

12. Yes, early consummation and early maternity is responsible for high maternal and infantile mortality. It eats vitally the whole society and prevents the growth of healthy nations and checks the intellectual and physical advancement of Indians.

13. Yes. It is existing generally among the educated classes, and also among those who are in close contact with them or who are under the sphere of influence of social reforming societies which are now in abundance and exist in every part of the country. Perhaps orthodox people have also been affected and generally resolution are passed to the effect that marriage may not be performed unless and until girl attains the age of 16 and the boy of 20 but in reformed and highly advanced social societies the age limit is raised, but at 18 or 20 (girl) 25 (boy).

Personally speaking I will prefer 18 and 25 in case of girl and boy respectively.

14. No, similar change has taken place in views of women.

15. Yes, birth registers should be exhaustive and complete. At present generally names of girls are not given at the time of birth entry, but it should be made obligatory on the parent or guardian of the girl to get the name of the girl entered in the register, after one month, if it is already not given. Further these birth registers should be thoroughly attested by some officials. Besides the law should give in the presumption of truth.

16. Yes, it will, age can be determined easily then by medical examination.

17. Yes. In case of marital offences the age limit ought to be fourteen and sentence ought to be two years with fine as proposed by Dr. Gour. and in extra-marital offences the age limit should be sixteen and sentence as is already given in the Indian Penal Code.

18. There should be differences in trials, marital offences should not be cognizable, and should be tried by jury if so demanded.

19. The only safe guard is that marriage before 14 should be made penal by Legislation.

20. Legislation fixing the minimum age of marriage would be more effective as being in conservance of public opinion in our part of the country.

21. People would rely on the strengthening of the penal law to serve the object in view.

Written Statement, dated the 14th August 1928, of Mr. K. S. SAUHTA, B.A. (Hon.), Bar-at-Law and Advocate, Honorary Secretary, Himalaya Vidya Prabandhani Sabha, Simla.

1. Not in my district. The actual cases under these sections here are very rare and far in between.

2. An advance on the present law will certainly be beneficial (wherever published broadcast in towns as well as villages) from the moral as well as the medical point of view. In my opinion knowledge is the beginning of fear, and the fear of the improved rigours of the law will result in counteracting many a temptation and is bound to diminish the amount of infantile mortality, and to some extent the diseases with which an innocent girl may be infected at a very early stage when she cannot be expected to know the ways of the world.

3. Seduction (specially of grown up women) is frequent, but not rape.

The latter part of the question regarding the 1925 amendment will be answered in Ans. No. 4 below.

4. The amendment had no effect either way, as the people of this district are hardly aware either of the said amendment or of the age limits fixed by the original (old) sections (375-376). Many causes contribute to this. Ignorance of the Law and poverty, want of education, rural nature of the occupation, dearth of newspapers amongst the masses, want of charitable institutions for their amelioration. Such causes result in making it almost impossible for the people of this district to keep in touch with such amendments. General apathy of the civilised world towards the helpless condition of the inhabitants also reacts in a hopeless state of affairs which infects the inhabitants with an equal apathy towards the happenings in the civilised atmosphere.

5. Between 14 and 15 years. No difference of caste, etc., affects the phenomenon.

6. (1) Yes.

(2) Implied in (1--3) between 12 and 15. The greater the poverty of the girl's parents, the less care can be taken of her, and the earlier therefore her virginity comes to an end.

7. Here the district may be divided into two parts—the interior ranges of the Himalayas and the outer-ranges with Simla as the parting spot. It is only in the outer ranges that a sort of impression of some religious injunction exists. A current saying supposed to be derived out of religious books enjoins on them to marry their daughters between the ages of 8 and 12.

8. These are two different ceremonies. Gaona is performed and not Garbhadan. Gaona is also known as Dhanoj or Geru-Pharu. It precedes the consummation of marriage. It has no reference to puberty at all, except in so far, that in the case of a girl of very tender age, she does not as a rule start living at her husband's house, until she is fairly matured, and passes her time until puberty at her parents' house after Gaona.

9. It is not until at least a year or two after the attainment of maturity that the healthiest girl could be said to be in a position to receive consummation.

10. In this district not until they are somewhere between 16 and 18.
11. There may have been cases of injury, but one can't be sure if they are mainly due to this cause. It is not easy to eliminate the possibility of other causes in a district without any sanitary organisation whatsoever. Details cannot be disclosed. On the whole there has been greater injury to progeny than to health.
12. Yes, I do. Other reasons are moral and social.
13. Yes, but they are mainly due to the activities of social body called the H. V. P. S. and the help rendered by Col. Coldstream, the late Deputy Commissioner, by calling in a Chief's conference on the matter.
14. Yes. This is due largely to poverty and the utility of female labour in this District.
15. Yes. Births, Deaths and Marriages and divorce Registers for all the Indian States around would be the best safeguards.
16. Yes the margin of error alone. About 14 to 15 a sudden change takes place in the girls here.
17. Yes, I would. I would keep only fine for marital offences and keep the present punishment for extra-marital. Sending a husband to jail immediately after consummation of marriage is very often tantamount to sending his wife on the street. It is a most critical moment in the life of a girl specially if she is about 12. But if the wife dies of the rape by her husband the punishment should be the same as in the case of ordinary rape.
18. Yes. Marital trials should be held in camera but before a jury, mainly selected from the locality of the husband and wife.
19. (i) Disallowing marriages by making them penal up to age fixed for marital offences.
- (ii) Making it an offence for the parents or guardian of a girl not to report a case of rape on their word after knowledge.
- (iii) Making it an offence for all medical practitioners and vaids to treat such a case unless they report it to the authorities at any time within 24 hours of knowledge.
- (iv) Making it an offence punishable with transportation for life or ten years minimum to report a false case of rape.
20. No. The latter.
21. Both. The latter are ineffective without the former, and the former is inoperative and a dead letter without the latter—specially female education.

Written Statement, dated the 15th August 1928, of the Secretary, Arya Samaj (Gurukula Section), Saddar Kabari Bazar, Ambala Cantonment.

I have the pleasure to inform you that your letter No. 42 A.C.C., dated 31st July 1928, and the questionnaire received therewith were placed in a public meeting of the Hindus (Aryas) of Ambala Cantonment, held in Arya Samaj Mandir (Gurukula Section) on the 12th instant. The questions were read, considered and discussed item by item and the opinion elicited in the meeting thereon are forwarded herewith as desired.

1. There is dissatisfaction amongst the advanced Hindus especially Arya Samajic Circle regarding the law fixing the age of consent at 13 and 14 as contained in Sections 375 and 376, Indian Penal Code.

2. The age fixed, viz., 13 and 14 by law is too low. It should be fixed at least at 16 years as ordained in Manu Samriti and by other Shastras vide copies attached duly translated in Hindi Bhasha. The girls below 16 are not physically fit and developed enough to bear strong and healthy children.

3. The crimes of seduction and rape are frequent in this District but most of the cases do not go to the Court.

4. The amendment of 1925 raising the age of consent to 13 has really to certain extent afforded protection to girls by postponing the connection of marriage; but to be more effective the age should still be raised higher to at least 16.

5. About 15 years in those who live in cities, but in villages the girls probably attain a little bit earlier puberty say at about 14.

6. The cohabitation in this part of the country is not common before the age of 14 or 15 years.

7. The practice of the early consummation of marriage before or at puberty in this part of the country is generally due to prevailing customs. There is no religious injunction.

8. In the case of early marriage, i.e., below 13 years the Gaona ceremony is generally performed one to three years after marriage and before consummation, but in cases of marriages of 14 or above the Gaona is generally performed with the marriage.

9. We do not consider that the attainment of puberty by a girl is sufficient indication for consummation. The marriage should follow about three years after puberty.

10. Not before 16 years.

11. Cohabitation before full physical development generally results in this part of the country in temporary and very often permanent impairment of health of girls. Some of them fall victims to tuberculosis, oateorhea, hysteria. Their progeny is generally weak and short lived.

12. The early consummation and early maternity is responsible for the high rate of mortality among women and children.

13. In this part of the country, the public opinion has generally much developed in favour of raising the age of consent to at least 16 years, both for marital and extra-marital cases.

14. No.

15. No definite knowledge or data are available.

16. Yes.

17. We do not suggest any differentiation should be made between marital and extra-marital crimes. They should be liable to same and maximum punishment.

18. With reference to our reply in number 17 there should be no distinction between marital and extra-marital offences.

19—20. The general opinion in our part of the country is that the law fixing the age of marriage (say at 16 years as suggested above) would be much more effective than the law fixing the age of consent.

21. Our opinion is that the penal law is necessary to secure the object in view.

विवाह के समय निश्चित करने के लिये मनुस्मृति की आज्ञा :—

वीणि वर्षाण्युदीक्षेत कुमार्यृतुमती सती ।

ऊर्ध्वं तु काकादितात्माहिन्देसदृशं पतिम् ॥

मनुस्मृति अध्याय ८ । श्लोक ८०

वर्ष :—रजसका जोकर कक्षा तीन वर्ष तक (१६ मास) प्रतीक्षा करे । उसके प्रयास कथने समान (मुख कर्म बाधे) यदि वे विवाह करे ।

आयुर्वेद के प्रसिद्ध ग्रन्थ सुश्रुत की आज्ञा :—

पञ्चविंशे ततोवर्षे पुमान्मारोतु षोडशे ।

समत्वागतवीर्योती जानीयात् कुशलीभिषक् ॥

पुनः

जन षोडशवर्षायामप्राप्ति पञ्चविंशतिम् ।

यद्याधत्ते पुमानगर्भं कुच्छिखः स विपद्यते ॥

जातोवानचिरञ्जोवेत् जीवेद्वादुर्बलेन्द्रियः ।

तस्मादत्यन्तबालायां गर्भाधानं न कारयेत् ॥

सुश्रुत शरीरस्थान अध्याय १० । श्लोक ५३-५४-५५ ॥

अर्थ :—पुरुष और स्त्री क्रम से पचीस और सोलह वर्ष के हो तब समान वीर्य जानी । अर्थात् २५ वर्ष में पुरुष और १६ वर्ष में कन्या युवा (जवान) होती है । सोलह वर्ष से कम उमर वाली स्त्री और पचीस वर्ष से कम आयु के पुरुष से गर्भ धारण किया (कराया) जाता है वह (कुछ) पेट में ही नष्ट हो जाता है । पैदा नहीं होता । यदि उत्पन्न हो भी जाय भी जीता नहीं । यदि जी जाय तो बहुत कमजोर होता है । इस लिये बचपन में (१६ वर्ष कन्या और २५ वर्ष पुरुष) गर्भाधान न कराये (करें) ।

Written Statement, dated the 14th August 1928, of L. GANGA RAM, Secretary, Arya Samaj, (Gurukul Section), Amritsar.

1. There is no appreciable dissatisfaction with the state of the law as it now exists in regard to age of consent bill—reasons being that the people are generally and female specially quite ignorant of the law as well as their own rights in connection therewith.

2. In the opinion of my samaj the law contained in Sections 373, 376 and 376A so far as it relates to cohabitation by husbands with their wives below a certain age being a dead letter hence it is necessary that there should be made an advance on it. There is evidently no such case in which husbands have been prosecuted under the sections for the reasons (a) that females are ignorant and illiterate as well as the marriage is considered a license for the husband to have a full conjugal right over his wife; (b) such prosecutions if possible is difficult to prove and the social and personal disgrace involved in such cases to both the persons and families stand in the way; (c) the Hindu marriage is indissoluble, if a husband is convicted on the testimony of his wife relations between the husband and wife will become strained and the husband will not support her, as the wife cannot contract a second marriage thus her life would be made wretched and unfortunate.

3. (1) Not so very frequent outside the marital state but inside the marital state wherever the girl is married below the age of consent the rape by husband is generally committed.

(2) The amendment of law in 1925 has made no marked effect and it is therefore necessary that the age of consent be raised to 16 years and general publicity be given to the law effecting it.

4. No.

(1—3) No.

The only remedy lies in the fact that marriage before 16 years in case of girls be made a penal offence and punishable by law for the reasons already given in my answers 2 and 3 above.

5. Girls generally attain puberty at the age of 14 in different communities and castes.

6. It is common in cases where girls are married (1) before puberty, (2) before she has attained the age of 13 years. Such cases never come to court for the reasons already given in my answer No. 2.

7. No such religious injunctions do exist.

8. No, it is not.

9. No, at least after about 2 years.

10. At the age above 16 years.

11. Such cases do exist but the details are not available, the girls are generally physically deteriorated and their progeny is generally weak and physically deformed.

12. Yes, the matter is so evident, that reasons are unnecessary.

13. No, because the law is little known.

14. Women on account of their gross ignorance generally favour early marriage but the ideas in them are advancing with the advance of education among females.

15. There is some difficulty experienced in determining the age of girls in such cases. The medical evidence is invariably conflicting and in many cases unreliable. The remedy which I would suggest is that the registers of births should contain a column in which the name of the girls be entered as soon as they are named. The parents being made responsible for the supply of the information after the child is named.

16. No, the difficulty would however be considerably minimised if the age of consent is increased to 16 years.

17. When the marriage before 16 in case of girls is made penal as already suggested the necessity for a law dealing with separate marital offences will not exist. As to the cases outside marital state the punishment as already provided in the law as at present is sufficient.

18. There would be no necessity for separate procedure within marital state as the offence will cease to exist according to my suggestions given above.

19. The investigations of such offences should be entrusted to the higher police officers and no case should be chalaned or discharged before a 1st class Magistrate is satisfied.

20. The penal legislation will only be effective when marriage before 16 in case of girls is made penal offence. This suggestion of mine is more in consonance with the public opinion of this part of the country.

21. I would suggest the law being strengthened as the evolution by social propaganda will be very slow and take a long time.

Letter, dated 21st September, 1928, from L. Ganga Ram, Secretary, Arya Samaj, Amritsar.

In continuation of my letter of 14th August last, in reply to your questionnaire, I beg to submit this note on a very important point in regard to your enquiry which you will be pleased to place before your committee for their very careful consideration.

The question of age of consent for girls primarily concerns the female sex only, and is in fact a sort of case on the part one sex against the other. The females are the aggrieved party and the males are the aggressors, your

might have observed from the statements of certain persons before your committee, how far partial and unreasonable they are in dealing with this question, I would say, of highest importance from the female point of view, leaving alone the higher question of the physical development of the coming generations, they will no way tolerate any encroachment to their liberties with the tender sex unmindful of the disparity of age, they have in fact gone so far in their prejudice that they would accept no limit to the age when they should be legally taken to task for their excesses with the girls of tender age.

You will believe, Sir, that the entire question of your enquiry concerns the amelioration of the female sex and they are then the only fit persons to tell their tales of woe in regard to the excesses made on their persons when physically immature for the consummation of marital rights. They from their own personal experience as well as those of their female friends and relatives are in a proper position to give their firsthand experiences and opinions as to the consequences of the consummation of early marriage. The opinions of males as to mental and physical suffering of the girls of tender age when subjected to early consummation of marital rights as well as those of extra-marital excesses are simply surmises and therefore should carry little weight.

It is also worth consideration that instead of the enquiry of this nature being entrusted to the female, and the female witnesses only to be examined, and that even in camera, to arrive at the actual state of their suffering it is being entrusted to the majority of the male members and the witnesses called in are mostly the males. This procedure is surely to result in miscarriage of justice.

It is therefore requested that the committee would kindly take this note into their careful consideration and call a larger number of intelligent and educated female witnesses specially those in medical profession of whom fortunately there is no dearth in the country, who are proper persons to give evidence as to the actual state of affairs in regard to the suffering of their sex under these conditions as men are entirely unfit to appear as witnesses or to sit in judgment in their case.

Written Statement, dated the 16th August 1928, of Mr. RAHIM BAKSH, President, Municipal Committee, Jullundur.

I have the honour to acknowledge receipt of the questionnaire sent by you with your circular letter No. 42-A.C.C., dated the 19th July 1928. I am sorry that I have been unable to find time to separately reply to each question; I therefore take the liberty of briefly indicating my views on the subject of the 'Age of Consent'.

2. Under section 375 of the Indian Penal Code as it stands at present sexual intercourse by a man with a girl who is not his wife and who is under the age of 14 years amounts to rape whether or not the girl has consented. It is now generally felt that this age limit is too low, and I believe that the proposal to raise it to 16 years will be generally approved in our part of the country.

3. The proposed changes in age limit in regard to married intercourse will also meet general approval but I doubt whether they will have any effect in practice. The only effective means of preventing premature consummation of marriage seems to be to penalize child marriages or in other words to adopt the remedy embodied in Mr. Sarda's Bill. I have not seen this Bill and do not therefore know whether it is intended to be applied to all communities. I may, however, add that the people of the Punjab generally and especially the Muhammadans are not likely to offer any serious opposition to the penalizing of child marriages.

Written Statement, dated the 23rd August 1928, of Miss KHADIJAH BEGUM, FEROUZUDDIN, B.A. (Hons.), M.A., Professor of History and Oriental Languages, College for Women, Lahore.

Early marriage is India's greatest misfortune and a chief source of physical deterioration, moral degradation, illiteracy, and economic ills. From the point of view of age, the marriage rules in this country are determined exclusively upon an animal basis with hardly any consideration for the individual health and national welfare. The custom has for its base the fanciful idea that the instant human sexes very much like the lower animals, reach puberty they should be given free license. Such a custom can be best termed by that appropriate designation called "animalism". In certain quarters the notion prevails that the increase in the marriage age will enhance immorality and illegitimacy. Adopt this theory and you degrade marriage instead of ennobling it. The basic principle of marriage is begetting a sound race. But to yoke mere babies at a very tender age into relations for which they are physically and psychically incapable for the degrading object of sexual gratification is nothing else than marital prostitution. It is degrading humanity and denying the "person" which verges on the limbo of an Ethical sin. Why to encourage children to incur such a heavy responsibility like marriage at an age when they are practically considered unfit for which they are physically and psychically incapable for the degrading makes it an offence if a man attempts to have illegal sexual relations with a woman and punishes him with "transportation of life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine". But the one who marries a mere child and practically assaults the poor being, goes scot free if the girl is thirteen because he has gone through the marriage ceremony with her. What misery must be the lot of the girls who fall victim to the baser passion of their older mates and the case is never reported because of the utter ignorance and false idea of honour of the parties making the bargain and helplessness of the innocent babe whose body and soul is thus crumbed and stunted. Herself a baby whose business is to carry satchel and dolls she is compelled to rock children in her arms. Premature maternity leads to an enormous mother and child death rate. The excess of boys over girls in this country is due to the mortality of girls from premature motherhood. Every year a large number of girls are taken away by death at the reproductive age and many of these deaths occur at child birth. It is evident from the census reports that the castes practising early marriage on an extensive scale have generally a smaller proportion of females at the age period 12—15. Inquiries into a large number of cases show that where the marriage of young people is consummated at an early age a fairly large percentage of wives die of phthisis or some other diseases of the repository organs or from some ovarian complication within ten years of the consummation of marriage.

Then again union contracted at the earliest age permitted by nature are to all evidence very productive. The necessary consequence of such a process would be, that the little ones would follow in quick succession on each others heels with the concomittant danger of injuring the physical and in many cases the mental side of the poor mother. The risk is equally great for the children who are bound to suffer from neglect. As a result their vitality is very low and unable to resist diseases most of them succumb to death in the first year of their life.

For nature pays back the imprudence of man by toil and suffering. A high birth rate necessarily means high death rate. "Survival of the fittest" is the inexorable law of Nature and the weak must go to the wall.

What a high toll India has to pay in precious life for not allowing time for the development of the mental, moral and physical self. How much misery and heart suffering can be avoided by a single act of prudence. Such

a transformation and prudence is sometimes trusted to a change in public opinion—which in this stereotyped country is not quick to adopt social keel-haulings. About for centuries back the Moghul Emperor Akbar began the rudiments of reform in this connection by forbidding the followers of Divine Monotheism from taking girls of tender age to wives. It is true, things are very much better now. In the North-West Frontier and the Punjab Provinces with which I have been closely connected I find that the former has never suffered from the havoc wrought by early marriage and the latter is only a partial victim to it. But it is a grim reality that Central and Southern India is firmly under the grip of this horrid custom, the Hindu Community in those parts being very conservative. But even their individual opinion is very much ripe against this cruel custom and that specially of the mother—a palpable proof of which could be found at the All-India Women's Educational Conference held at Delhi, February last. There were about two hundred women delegates representing an echoing the voice of the women of provinces like Bengal, Bihar, Madras, and States like Jaipur, Jodhpur, Travancore and Cochin. With one voice they passed a resolution requesting the Government to raise the age of consent of girls to sixteen. The question may arise when the opinion has so far developed, why not leave the task to the public itself. But the rule is, that though chafing inwardly at this hard lot of their children they have not the courage to break through the fetters of the custom for fear of *Birudaris*. To wait for the elevation of suffering of humanity and specially womanhood till the whole of India is of one accord in the matter, means years of untold misery. The Legislative and is thus very essential and will be welcomed by the womanhood of India at least, with a sigh of relief and feelings of deep gratitude.

Now the point is what should be the "age of consent" for boys and girls entering into marital relations.

The common age at which girls attain puberty is between the years of fourteen and fifteen, fluctuating with the constitution, heredity and mental standard of the girl. Even if we take fourteen years as the common age of puberty for the girls it does not mean that immediately after that the girl becomes fit for marital responsibilities or the hard task of child bearing. A period of two years at least must be allowed for the physical development of the organism to be able to perform the mother's function.

In this connection it seems very necessary to determine the age of the boys as well, to avoid great disparity of years between the parties entering into marital relationship. In some marriages of the near kin the girl is much older than the boy, and yet no hesitation is felt in joining the two beings with the common excuse "ghar ki larki hai". In other cases young girls are yoked to old dotards more suitable to fill the position of a grandfather than a husband. To obtain human beings best fitted to hand on the torch of life, and for the racial uplift the essential factor is the equality of years between the generating couple. From this point of view sixteen for girls and nineteen for boys are the most suitable years of getting married to be fixed by legislative method.

The advocates of early marriage put forward the plea of the "Gaona system" according to which the girl after the marriage ceremony stays with her parents till she attains puberty. But it must be borne in mind that the "Gaona system" is not at all known in Upper India, and even in the provinces where it was held in high esteem in the India of antiquity, is no longer strictly followed owing to the onslaught of an alien civilization. Many poor parents, once they have got the girl married would feel it a burden to maintain her and on the other side the parents in law especially where they have no daughters of their own sometimes like to avail of the services of the young daughter-in-law and get her to live with them and consequently with the husband. Even in the Punjab I have known cases where the girls have been married below thirteen and soon after the marriage have lived with their youthful husbands. Once the marriage ceremony is

undergone it is an impossibility to protect the child wife from the assaults of her husband especially when he is sufficiently old. In the questionnaire issued by the age of consent committee question No. 4 hurting common sense and decency is rather difficult to answer. All that one can say is this that it is obvious to any reasonable person that if a grown up man is allowed to marry a girl of twelve or thirteen without let or hinderance, and knowing no other woman in the house to help in the household duties, cannot dispense with the services of the child wife then in the absence of the social and legal restraint what can be the guarantee for saving the morally innocent and physically unfit child from falling a victim to the unruly base passion of her mate? As related before, such cases never come to the court. In the history of the Punjab for the first time, last month, there was a case at the Lahore High Court and the culprit was given very light punishment as it was the first of its kind. The one and only sure panacea for all this misery is that marriage of any couple below the legal age of consent be considered a penal offence.

In the absence of the just and due punishment of the offenders aiding and abetting in augmenting human misery mere legislation will remain a dead letter as it has so far remained.

With the age, that is sixteen, suggested by that most representative body, the Women's Educational Conference, discussed and resolved at Poona and vehemently redisussed and reiterated at Delhi, question No. 17 of the "questionnaire" does not arise. Where lies the necessity of marrying the girlhood by allowing marriage at the age of thirteen, sending the man to jail for an offence, an ordinary man does not think justifiable, for which the inadequacy of the law is itself responsible. What sense is there in causing an unnecessary trouble and disgrace to the married couple, by leaving the girl unprotected in case she had no parents of her own and her relatives are not ready to give her shelter when they have been once rid of her. Why not put an end to all this human suffering at one stroke by cutting the gordian knot and fix such a marriage age by legislature, which would elevate humanity and procure a healthy sound race.

Perhaps some fear is entertained of public opposition if Government tries to interfere into the custom which by long practice has acquired the very sanctity of religion. But my answer to such flimsy fear is that the Indian public is better prepared to welcome legislative and Government interference in this case than it was for the abolition of Satee in 1829.

Of course no gains without pains. Such difficulty will be felt in official quarters as the statistics machinery will have to exert itself with a vigour. To my mind that is the only inconvenience which the Government will experience for the welfare of their Indian subjects. As for the trouble to be met with in making birth and death registration obligatory it will not be any the worse than in European countries.

In the present circumstances a medical examination can easily determine the age of the girl at and after fourteen than before that. Consequently if the marriage age is fixed at sixteen for girls the margin of error will be lesser than at thirteen.

Another important point is the impossibility of intellectual development when the girl is forced to incur the heavy responsibilities of a married life for which both her mind and body are utterly unprepared. Rightly it is said that in India there is no girlhood. Girls are children and then women. Child marriage allows no leisure, in the absence of which there can be no education. If the present state of things is allowed to continue longer, it means that half of India, nay more than that, will ever remain ignorant.

It is high time that a Committee is appointed to examine the conditions and there is every hope that that august body will strive every nerve to remove this ban from India.

It will recognise the duty to motherhood not only from the ethical standpoint, but as an important factor in national regeneration. It must be kept in view that the degradation of motherhood is the degradation of the society, of the race, and of the country. Any nation that disregards motherhood and fails to shelter its much needed mothers pays a penalty in mental and moral decrepitude, disease and racial decay as India has paid. Our race and country is suffering from maternal exhaustion and the remedy is in the hands of the Committee, and the Government. There is every hope that the investigation of the age of consent committee would prove a force strong enough for the protection and education of the mothers of the race and bring about a mental, moral and physical regeneration of the country.

Written Statement, dated the 23rd August 1928, of Mr. NAND LAL ARYA, President, Arya Samaj, Wachhowall, Lahore.

1. Yes, the age of consent outside the marital state is too low and the law as regards cases within marital state is practically a dead letter.

2. An advance should certainly be made in the direction of raising the age of consent to *sixteen* years. In the opinion of this Samaj a young girl of fourteen is not competent to give an "intelligent consent to cohabitation with a due realization of consequences". As regards cases within marital state there cannot be any appreciable improvement by any change in the law except by making the marriage itself with girls of tender age penal.

3. No, the amendment of the law has not much to do with it. Rape or improper seduction is rare among the Urban and Educated classes.

4. No. As already remarked in answer to question No. 2 the married girls can only be "protected against cohabitation with husbands within the prescribed age limit" by making the marriage itself with a girl of tender age penal.

5. The usual age at which girls attain puberty seems to lie between years 13 and 14.

6. No, it is not *common*. Marriageable age of girls has already been considerably raised.

7. No. As already remarked the marriageable age of the girls has generally been raised in the Punjab and specially amongst the educated classes. But wherever the practice of the early consummation of marriage before or at puberty exists it is due rather to custom than to any religious injunction.

8. Amongst the Arya Samajists the ceremony is fast dying out, and the same is the case with the educated classes, as they do not marry their girls under sixteen years of age. But amongst the masses the ceremony is usually postponed and it generally coincides with the consummation of marriage and is generally performed a year or so after the attainment of puberty. But in the opinion of the Arya Samaj the ceremony is not a sufficient protection against early consummation. The marriage of a girl under sixteen should be made penal.

9. No. At least three years after puberty.

10. When she has at least attained the age of sixteen years.

11. Only a medical practitioner can know of such cases.

12. Yes.

13. The answer to this question has already been given in answer to question No. 1.

14—15. No.

16. If the age of consent is raised to 14 years or above, it is just possible that the difficulty in determining the age may be reduced as it will be easier to distinguish an adult from a girl of tender age.

17. Yes, if the marriageable age is not fixed at all by law; or, if fixed, it is fixed at a lower age than sixteen. As already remarked in answer to question No. 1 the law as regards cases within marital state is practically a dead letter; but still this Samaj will vote in favour of the proposed amendment in the form of an addition of section 376A, as it will at least create a moral atmosphere against early marriages or early consummation.

18—19. Nothing particular to say except that every possible safeguard must be provided to avoid Police interference at every stage and more specially in cases within marital state.

20. Evidently the fixing of a minimum limit of sixteen years for marriage of a girl is bound to be more effective in checking the evil of early consummation. As far as the Lahore Arya Samaj can think it is of opinion that the postponement of marriage will be liked better; although it may be just possible that some of the backwards may like the other alternative for the simple reason that it is to be for all practical purposes a dead letter.

21. This Samaj should like to rely both on social reform and on the strengthening of the law. The law is not likely to effect much improvement through direct interference but is sure to have its moral influence felt indirectly and is bound to act as a preventive measure of some potency.

Written Statement, dated the 27th August 1928, of Lala KESHO RAM SEKHRI, Advocate, Amritsar, Member, Punjab Legislative Council.

1. The vocal public expresses its dissatisfaction with the present state of law and this feeling, to my knowledge, is shared even by the illiterate but finds little expression owing to their habit of making the best of the situation in which they find themselves. If the law is changed and the age of consent raised there will be easy adjustment to the new conditions.

2. The very vitality of the nation is being sapped by the existing practices and if we are to hold our head high among the nations of the world we must put a stop to the state of affairs which leads to physical and therefore mental and moral deterioration of the race. Nothing will stimulate activity on the right line than a lead by the legislature prohibiting consummation of marriages and sexual connection below a certain age. The people of India are wont to regard legal enactments as something sacrosanct and they are more likely, even if conservatively inclined, to adopt the new law and submit to it. The instance of the Kashmere and other States where people are even less advanced than those in India will bear this out.

3. Seduction is more frequent than rape in the Punjab especially as girls are abducted for sale owing to considerable surplus bachelor population among certain communities and more especially among the Jats. The only sphere where law can be made more effective seems to be to raise the age of consent in the case of all girls to 16 years.

4. In the Punjab marriages of girls below 13 are very rare and therefore the evil referred to does not exist in any substantial form, but I should like to raise the age of consent to 16 years even in the case of married girls. The period of girls waiting in their parents home after marriage before the consummation takes place will have to be prolonged perforce by such husbands as marry before this age. But I should suggest that logically all marriages

before 16 should be penalized, otherwise it would be impossible to detect whether between a husband and a wife consummation of marriage has taken place. The object of this reform would thus be partly frustrated. To my knowledge no husband has so far been sent up for trial on a charge of rape.

5. Generally girls in the Punjab attain puberty between 13 and 14 and this is applicable to all classes and communities.

6. No. There are rare cases in which cohabitation takes place before 13. It does take place soon after puberty in a fair number of cases but the practice is not widespread. No case of this kind has come to court, to my knowledge.

7. In the Punjab marriages are regulated rarely by rigid religious injunctions and if this belief exists anywhere in this province it must be among very backward people. Here the situation is regulated partly by custom among particular communities, partly by economic considerations and partly by the need for adjusting these ceremonies to periods declared by the priests as suspicious for the purpose. Therefore consummation of marriage is not regulated by religious injunction. The old beliefs in this respect may be said now to have practically died out in the Punjab.

8. There is no such practice in the Punjab.

9. The attainment of puberty is no indication of her physical development justifying consummation of marriage. No sexual intercourse should take place before a girl has attained the age of 16.

10. 16 years.

11. Many a girl in the Punjab are in the grip of tuberculosis because they indulge in sexual intercourse before attaining the full physical development. Most of them had cohabitation after the age of 14 and even then could not stand the strain of marital relations. The health of their children is certainly prejudicially affected.

12. Mostly early maternity is responsible for high maternal and infantile mortality but the lack of proper housing sanitation, water supply and proper nourishing food also nowadays contribute materially to the deterioration on our race.

13. Public opinion in the Punjab is quite ripe to receive even the proposal made by me and act up to it. Reformist organizations have been working with greater success in the Punjab than probably in any other part of India. The amendment of 1925 hardly touched the Punjab as there are so few cases of consummation of marriages even at the age of 13.

14. Women in my part take definite precaution to prevent union at an early age because they do not think there is any religious injunction on the subject.

15. Owing to social conditions in India it will always be difficult to determine the age of a girl to find out whether an offence has been committed. And as I am averse to placing this weapon in the hands of police I am of opinion that the only way to tackle the problem is to make effective arrangements for registration of births in villages. The baptismal certificates among Christians are always a conclusive proof of the age of a person as it bears the name and percentage of a child. A practice of this nature should be enforced among the other communities. With the spread of education the entries in the school register too would be of help. The medical evidence is generally defective and certainly inconclusive.

16. The difficulty may be minimised, at any rate the harm will be minimised, if the age is raised to 16.

17. I will make a difference between the two classes. Schedule is attached.

Extracts from the Code of Criminal Procedure, 1898, Schedule II.

OF RAPE.

XLV of 1800 Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable, or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what court triable.
1	2	3	4	5	6	7	8
376	Rape— (If the sexual intercourse was by a man with his own wife not being under 13 years of age).	(Shall not arrest without warrant).	(Summons)	(Bailable)	(Not com- pound- able).	(Imprisonment of either de- scription for 2 years, or fine, or both).	(Court of Ses- sion, Chief Presidency Magistrate or District Magistrate.)
	If the sexual intercourse was by a man with his own wife being under 13 years of age.	Shall not arrest without warrant.	Summons	Bailable	Not com- pound- able.	Imprisonment of either de- scription for 7 years and fine.	Court of Ses- sion.
	In any other case.	May arrest without warrant.	Warrant	Not bail- able.	Not com- pound- able.	Transportation for life or imprisonment of either de- scription for 10 years or fine.	Court of Ses- sion.
376-A	Illicit married intercourse by husband with wife not under 13 and under 16 years of age.	Shall not arrest without warrant.	Summons	Bailable	Not com- pound- able.	Imprisonment of either de- scription for 1 year, or with fine, or both.	Presidency Magistrate or magis- trate of the first class.

18. The offence should be non-cognizable in the case of marital relations but the marriages should be made compulsorily registrable and the Registrar should be the authority to lodge a complaint against a husband. The offence of the other class should be cognizable.

19. See above.

20. Minimum age of marriage which I have already suggested should be 16.

21. They must go hand in hand. I think legal provision should strengthen social reform movement and would stimulate the efforts at present being made to bring about a change in the outlook of the people.

Written Statement, dated the 28th August 1928, of Mr. JAMNADAS, B.A., LL.B., Advocate, Secretary, Arya Pradeshik Pratinidhi Sabha, Punjab, Sind, Baluchistan, Lahore.

With reference to your letter dated the 18th July 1928, I, on behalf of the Arya Pradeshik Pritinidhi Sabha, Lahore, have the honour to submit the following replies to the questionnaire seriatim:—

1. Yes.
2. (i) The orthodox views of the backward Hindu masses.
(ii) The medical considerations, rationalistic views of the advanced Hindus needs of the times and the welfare of the race.
3. No, no. So long as the number of men is larger than women in a given Ilaqa, these crimes will, of course, more or less continue. Not only mere fear of punishment but right sort of education intended to improve the moral and social condition of the people can go long way to make the law more effective.
4. No.
(a) Education.
(b) Penalizing the marriages before a given age.
5. Between 13 and 14 years of age. No.
6. Cannot say. No. Not generally; very seldom a case may come in court.
7. No.
8. Strictly speaking no *Garbhadhan* ceremony as enjoined by the Shastras is performed. Something similar to it is performed under the name of *Ret*. It is posterior to consummation of marriage. It is performed after attainment of puberty sooner or later.
9. No. After a girl has completed the 16th year of her age and about two years after she has attained puberty.
10. Marriage is generally a determining factor. Generally speaking between 14 and 15 years of age.
11. Yes. The girl raped was about 14 years of age; her medical examination showed that her private parts were very seriously injured.
12. Yes.
13. Yes, but it is not general but is confined to the educated people.
14. Yes.
15. Yes. The birth and death registers must contain the name of the child. If the entry of the birth be made before any name is given to the child, the entry must be revised and the name entered afterwards.
16. No.
17. Yes, the same as given in section 376, Indian Penal Code, with this amendment that in case of a husband imprisonment may be raised from two to four years.
18. Yes, the same as given in the schedule appended to Act XXIX of 1925.
19. (a) In sections 44 and 45 (c), Criminal Procedure Code, section 376, Indian Penal Code, may be inserted.
(b) The Executive Officer should encourage and reward the informants of such offences.
20. No. I think that the legislation fixing the minimum age of marriage will be more effective and will be in consonance with public opinion here.
21. I would prefer to rely on the progress of social reform by means of education and social propaganda.

**Written Statement, dated the 31st August 1928, of Mr. B. L. ANAND,
Secretary, Himalaya Brahma Samaj, Simla.**

1. Yes, there is dissatisfaction, particularly among the enlightened classes who have of late been realizing keenly that the present "Age of Consent" is too low and want it to be at once raised to sixteen years if not eighteen.

2. (1) *Nil*.

(2) (a) Established government, under which the fear of the chastity of unmarried girls being molested is daily decreasing.

(b) The daily growing sense of the decay and degeneration of race on account of child-marriage.

(c) With the advance of education and enlightenment the belief in the so-called duty of parents to give away their daughters in marriage before the commencement of puberty and menstruation is fast going away.

(d) The odium that attached to delayed marriage is lessening.

(e) The growing sense of the sacred duty of parents to give "good" education to their girls to enable them to become good wives and mothers.

3. (a) Yes, in villages and particularly among low class people, both Hindus and Mohammadans.

(b) Yes, and further raising the "Age of Consent" accompanied with provision for the infliction of deterrent punishment is sure to reduce cases of rape. But sometimes it becomes very difficult to know the exact age of the girl. Sometimes false certificates of the date of birth are obtained and produced. I would propose that the Birth-Date Registers should be kept in the custody of more responsible officers—particularly the old records. If possible duplicate should be made of registers after the lapse of one year and the two records kept in the custody of two different officers in the district, e.g., the Civil Surgeon and the Superintendent of Police. The fear of detection by comparison will deter the low-paid clerks from tampering with or forging the records.

4. Yes, but *not* considerably in (1) and (2). No. 3 is the only effective method. We would advocate early legislation for raising the age of marriage as suggested in Mr. Sarda's Bill. It is much better to postpone marriage than postpone its consummation which is, even in respectable families, not always unattended with serious dangers.

5. (a) Between 13 and 14, generally, but it is delayed in colder parts of our province. Yes, it does differ in different castes, communities and classes of society.

6. Yes, I know with certainty of Lahore and Amritsar, in the case of No. 2.

7. No religious injunction but superstition resulting from ignorance. It is fast going away as explained in my 2 (e).

8. (a) Yes.

(b) It coincides with the consummation of marriage and is preliminary to it. It is known also as "Muklawā" in the Punjab.

(c) Soon after the attainment of puberty.

9. (a) No.

(b) It would be good to delay consummation as long after puberty as possible preferably by postponement of marriage. A healthy girl, born of healthy parents, and brought up in healthy environments, may be deemed fit for marriage near eighteen years of age without injury to her own health and that of her progeny when her own body is fully developed.

10. Not before eighteen.

11. I am not a medical practitioner, but I know of several cases of shattered health and injured bodies resulting from early sexual intercourse.

- (a) Girl, 13 years old, married to a widower 22 years old, girl developed bent spine soon after marriage.
- (b) Phthisis in the case of two girls resulting from early indulgence at the age of, fourteen—girls married to widowers aged 27 and 29 respectively.
- (c) Anæmia, pale wan look, emaciation, swelling and pain in the internal organs of generation, irregularity of monthly periods and early death through consumption are some of the cases that have come to my notice which as a layman I have always attributed to early and frequent cohabitation of newly-married couples.

Similarly babies, sickly and weak, dying within a year, particularly at the time of dentition, due to—

- (a) Want of vitality in themselves.
- (b) Want of vitality in the girl-mother to properly look after the baby or to feed it upon her own milk.

12. Yes, early maternity is responsible in no little measure for high maternal and infantile mortality. It also indirectly affects the prosperity and well-being of the people.

13. Yes, a good deal, but mainly confined to the educated and enlightened classes. I know of so many public meetings held in support of Mr. Sarada's Marriage Bill, requesting the Government not only to pass that Bill but raise the marriage age to *at least* 16 and even 18 years in the case of girls, and heavily penalise its infringement.

14. Sometimes, but chiefly among the uneducated wealthy classes.

15. Read my answer to question 3 (b), regarding production of false certificates.

16. Not much, but still I would insist upon raising the age of consent to 14 or 15 and even 16.

17—18. Yes.

- (a) Extra-marital offences should be cognizable and non-bailable, severely punishable and triable by a court of sessions.
- (b) Marital offences being difficult of detection should always be accompanied with exemplary punishment whenever proved, but they should be considered as bailable though not compoundable and should be tried always by magistrates of very high reputation for integrity and impartiality so that the rich and poor are punished alike.

19. If any member of the Reform Associations should undertake to report any case of punishable cohabitation within the marital state, he should be given every reasonable help and encouragement. For cases of cohabitation without the marital state it should be made the duty of public officers particularly doctors, male and female, and dais to report such cases as soon as they come to their notice on pain of punishment. But the best safeguard is to raise marriageable age to sixteen for girls and eighteen for boys.

20. (a) Legislation fixing the minimum age of marriage is more advisable than legislation fixing a higher age of consent. "*Lead us not into temptation.*"

(b) The former fixing a higher age of consent would be advocated by the uneducated, orthodox and conservative people, wanting in moral courage to stand by reform. The latter fixing a high minimum age of marriage would be more in consonance with enlightened public opinion and more practicable also.

21. Yes, we prefer to rely on the strengthening of the penal law to secure this purpose, for the progress of Social Reform by means of Education is an

extremely slow process in our country. After more than 150 years of the introduction of education we find the percentage of educated people, men and women, is so sadly low. Even educated people are very often so weak of purpose. "Prejudices die hard but they can be stifled sooner."

**Written Statement, dated 4th September 1928, of Mr. HASI RAM,
Secretary, Shri Brahman Sabha, Simla.**

1. Yes, in respect of cases of rape outside the marital state.
2. The Punjab is a province where the number of males far exceeds that of females. This, combined with the fact that the rapidly changing circumstances of the country lead to greater movements of the population thus leading to strangers coming into more frequent contact with each other, results in the increase in the number of cases of rape and therefore it is becoming more and more necessary, with the advance of time, to check the advance of crime by all possible means including the legal.
3. (a) Yes.
- (b) No information.
4. No information.
5. (a) From 12 to 14.
- (b) No information.
- 6—7. No.
8. *Gaona* ceremony is observed. It is mostly anterior to the consummation of marriage although with changing ideas about the age for marriage, it coincides with the consummation in the case of grown up parties.
9. (a) No.
- (b) After 16 years.
10. After 18.
11. No.
12. It is one of the factors for the physical degeneration of the younger generation.
13. Yes, among the people educated on western lines. The masses are generally unconcerned.
14. They used to, but old ideas are fast yielding place to healthier ones.
15. No information.
17. Yes. Extra-marital offences are already adequately provided for. In cases of marital offence punishment should be confined to fine only.
19. No.
20. First alternative. The age of marriage involves religious scruples and legislation in that respect is likely to defeat the object by the people equivocating in the matter.
21. On the law for extra-marital offences and on education and propaganda for marital offences.

**Written Statement, dated the 14th September 1928, of Mr. VIDYA
NATH KOHLI, Journalist, Sanjoui, Simla.**

1. There are always two sides of the question. When on the one hand literate people are quite satisfied with the state of law as contained in sections 375 and 376 of the Indian Penal Code, the illiterate are to some extent dissatisfied with section 376 on account of the heavy term of imprisonment of about ten years or transportation for life being highly excessive as to the

offence committed. I would recommend that some efficient arrangements be made to give publicity to this law in view of the importance of the subject and daily increase of such unnatural crimes. Tehsildars and Patwaris can prove to be very efficient if this work be entrusted to them. It is also considered that if the law be given wider publicity it will prove to be of much value in the rural areas where such crimes are quite frequent and besides it will greatly help in diminishing such crimes.

2. (a) There would be no greater mistake than the retention of the present law of the age of consent. It is for the simple reasons that should the law be retained as it is, there would be a general break-down of the mothers with the intercurrent diseases which will thereby seriously affect the vitality of the future generation of India who are doubtlessly the saviours of Mother India. Besides all that the children being not fully developed the infant mortality will become very high. Mothers will give birth to children with lean and diseased bodies who will obviously be victims of such dangerous diseases such as consumption and its allied diseases.

(b) If on the other hand the present law be modified and the age of consent be enhanced it will be of immense benefit to the younger generation. Both the mother and child will remain healthy. I being a Punjabee know of many instances in which mothers of the Punjab have produced sturdy sons. In certain districts of the Punjab such as Amritsar and Gujranwala men are well-known for their healthy constitution. This is all due to the fact that in those places early marriage evil is not prevalent as in other parts of the Punjab. In the district of Gujranwala I understand there was an old man who infused the idea a century ago that early marriage be avoided as far as possible. The people followed his this doctrine with the result that we see that it is a well-known district for the health of the people. Similarly is the case in Amritsar where an old Sikh Guru said that one who will marry before the age of 18 will be doomed to hell. In health and constitution Amritsar holds second position. Some people say that in these districts healthy constitution is due to the hard work and fresh air but I give this the secondary place. I know of an old man of Amritsar who was once complaining that since the British Raj infant mortality has considerably increased. When asked as to how he can account for the same he said that it is all due to western civilisation and early marriage evil. When I say this I am taking into consideration only Punjab and no other place where the case is quite different.

3. It cannot be definitely asserted whether crimes of seduction and rape are frequent or not since such like cases very seldom come to the Court. There are, however, certain instances in which such cases are brought to the Court of law and accused have been awarded heavy term of imprisonment. There are also cases in which people have committed crimes of seduction or rape and afterwards killed the girls, thereby preventing the matter coming into light. The most notorious part of the country for committing such offences that I know is Lahore to which I personally belong. In the heart of that city there are certain places where girls of noble families are brought for immoral purposes. In many cases they are killed and in the other absconded and the Police could not trace the culprits. The amendment of the law made in 1925 has proved but little in preventing or reducing the cases of seduction or rape. I would suggest that when the law be revised and the age of consent enhanced, some practical means should also be adopted to have a check on the immoral trade which is quite frequent in some parts of the country. I suggest that a special department which will be a part of the Criminal Investigation Department may be established to bring such cases to the lime light. There should also be recruited women to work in this special department.

4. From my point of view the result which was in view in raising the age of consent within the marital state to 13 years in protecting married girls against cohabitation with husbands within the prescribed age has not been achieved. In answer to this question every man who has got a little of sense can say that once the girl is married, the outside world cannot

come to know whether the husband and wife have cohabited or not. In the event of the husband cohabitating against her will, can the girl make such a bold attempt and bring the case to the Court of law and thereby ruin her life by getting her husband with whom he has been legally married imprisoned. One cannot say with accuracy whether such cases are frequent or not, since such cases seldom come to the Court. However, it is understood by experience that once the girl is married she cannot remain untouched irrespective of the fact whether she attains her prescribed age or not. There is only one way out of it that the girl after her marriage should not be allowed by law to go to her husband's house and if they are allowed the parents of both the girl and the boy be prosecuted instead of the girl and boy. In this connection I give primary preference to putting off marriage beyond 13 and secondary to the educating the public opinion in this direction. Penal legislation be introduced and marriage age be put beyond 13 years. I propose that no heed should be paid to the crying of those orthodox who hold adverse view on it as this is the question which vitally effects the future generation of Mother India. When it has been made law, the public opinion should then be stimulated. I suggest that this propaganda work should be carried out by a Publicity Bureau which should be established in every town with its branches in villages. Half the staff of this Publicity Bureau should be women who can carry on their propaganda among the fair sex. Much expenses are not involved in these Publicity Bureaus and my calculations go to show that if a Publicity Bureau be introduced in each province with its 12 branches in towns and 12 sub-branches to work in the rural areas, it will not cost more than one lac and 80 thousand per annum. I do not take this amount to be much as compared with the benefits which will be derived from such bureaus. I would also like to suggest that there should also be women police as in the Western countries. The cases of immoral practices and such other should be entrusted to them for un-rooting.

5. In our part of the country the average girl attains puberty at the age of fourteen. This differs in different classes and communities. For example in the case of high class Hindu families the girl attains puberty at the age of thirteen while a girl of low class attains at the age of twelve. This to some extent also differs in the climate where she lives. The more the place is hot the sooner the girl attains puberty.

6. In the Punjab the cohabitation is not so common before puberty as it is after she had attained it. It is in very few cases that such cases come to the Court. In certain cases the parents of the girls who are involved in such immoral practice try their best to prevent the case of their daughter coming to light lest it seriously affect her future, while on the other hand such cases are generally hushed up by the Police. So it is in very few instances that such cases are brought to the Court of law.

7. Although I am not fully conversant with the Religious laws, but as far as my knowledge goes there are injunctions in Hindu Sastras which debar the marriage of the girl before she attains puberty. I do not exactly remember where but there are instructions on this point in the Sastras prescribing the age limit of the girl. Some of the religious books prepared during the Mohammaden rule say that the girl should be married at the age of about ten years. That is due, however, to the fact that the Moghuls and other invaders from the North used to carry away unmarried young Hindu girls for immoral trade. So I do not consider that the law which held good some two centuries back is equally good now. There are certain beliefs still prevalent that if parents marry their girl when she has become "Rajaswala" (and no longer remains Kanya when she should have married) both father and the mother are doomed to hell.

8. Yes, this ceremony is performed in certain parts of the Punjab and is confined to certain classes. There are certain classes who coincide it with and there are others who anterior it to consummation of marriage. The ceremony is performed soon after the girl has attained puberty in certain orthodox classes and after three to four years in the educated classes. In fact

this ceremony has got a link with some of the old Sastras which say that the girl should be married three to four years after she had attained puberty. Keeping in view the old superstitious belief that if this ceremony is not performed just as the girl attains puberty the children of the girl would not survive, some orthodox Hindus perform this ceremony as soon as the girl attains puberty.

9. It is absurd to talk that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. A girl may attain puberty at the age of 12 as it is the case in some of the low class families but she is surely not fit for child bearing and safe delivery. It is not late after marriage when the husband take his newly married wife to his house and commences using his child producing machine and just after a year or so that young girl produces a child. I know of an instance in which a healthy girl with robust physique was married at the age of thirteen. Only six months had elapsed when she was pregnant and when she stepped into her fourteenth year a child was born to her and she died. I still remember the scene when she cried with labour pains throughout the whole day and night. At last the next morning forks had to be used to effect delivery. Soon after the delivery both the mother and the child died. Here lies the peril of Indian Nation. I also know of another girl who was that unfortunate girl's co-mate, and three years senior in age to her. She has recently given birth to a child and the girl is also in perfect health. Under the circumstances I think the age between 17 and 18 years is quite enough to justify such consummation of marriage without injury to her health or that of her progeny.

10. This generally depends to the class and community to which the girl belongs, but I think the age between 17 and 18 years is quite enough when the average intelligent girl can consent to cohabitation with a due realisation of consequences. This age also varies according to the health of the girl. If her constitution is quite good she may consent to cohabitation a year earlier, but in any case the age between 16 and 18 years is quite appropriate when the girl should be allowed to cohabit. There are certain instances, which are of course very few, when the girl as soon as she attains puberty would like to get herself married and become house wife, not realizing the consequences of that early marriage and early cohabitation.

11. During my course of life I have not come across cases of cohabitation before puberty, but I know of many cases in which cohabitation has taken place soon after puberty but before full physical development which resulted in serious injury to girl's health. In such cases the girls became physical wrecks for the whole life suffering from innumerable internal diseases coupled with serious injury to her progeny. I have an example before me of a girl who owing to cohabitation before her physical maturity caught tuberculosis and gave birth to three children who were also victims of the same deadly disease. The ultimate end of the mother and her children was that they all died when the mother had not attained the age of 30 and her children of 10, 8 and 6 respectively. That was the end of that rich and well-to-do family amongst whom not a single soul is seen now-a-days. There are many other instances and I often wonder what will happen to the Indian Nation if this evil is continued for another half century. If unfortunately some of the children of such mothers survive they are physical wrecks and are always victims of one or the other disease. These sickly children are the future hopes of India who are expected to face those sturdy foreigners in the battle. My blood rushes into my veins when I think of this state of affairs and cannot help blaming the English Government which does not use preventive measures to guard the Nation from this growing evil.

12. Yes, I consider early maternity responsible for high death rate which undoubtedly affects the whole of the Indian Nation. There are other factors too which play some part for the infant mortality but I assign primary place to early maternity. This, as already stated, plays the chief part in the

decay of the Nation than anything else in the world. This is what bars the physical and intellectual progress of the people.

13. Now the situation has somewhat changed. Specially in the Punjab since the amendment made in the law in 1925 there has been considerable modification as to the age of consent as laid down for marital and extra-marital cases. So much so that now educated members of the fair sex have commenced raising their voice from the platform strongly protest against the marriage as fixed by the law of 1925. Though so far it is confined to educated classes but a glance at the present situation at once reveals that the day is not far off when every class will raise their voice protesting against the early marriage evil. Public have since been able to recognise the evils contained in the early marriage and also by the law which according to them vitally affects the younger generation of Mother India. I do not think for a moment that in the event the age of consent is enhanced there will be any hue and cry from at least my part of the country where the situation as I have already said has considerably changed.

14. Yes, especially the old uneducated women folk belonging to the old school of thought consider it extremely necessary to marry their children at the earliest possible age. In fact they remain anxious to look for the day when their son or daughter produces a baby and they will take pride in calling him or her as their grandson or granddaughter as the case may be. They consider the sooner a grandson is born the sooner he will become young and they dream for the day when he after finishing his schoolistic career will become a clerk in some office drawing Rs. 25 per mensem. Perhaps these old silly folks seldom consider for a moment the difficulties which are in store for him in the world on account of his being lean and of diseased body. But now fortunately the number of such old folks has much decreased and some of them have considerably changed their point of view by coming in contact with people of the modern school of thought. I think the day is not far off when the number of such people will be completely eliminated from the whole show.

15. Of course, much difficulty in many cases is experienced in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code. Naturally some girls who belong to rich classes grow pretty young before they even attain the age of thirteen while on the other hand some of the poor or middle class girls remain quite lean on account of scarcity of food. Besides this girls who belong to some particular villages of the Punjab which are well-known for the high proficiency of constitution are of robust physique and one can hardly say with accuracy the age of such girls. To avoid or minimise the difficulty in finding the exact age it is suggested that birth registers be properly maintained in every town and village. The work of maintaining such registers should be entrusted to reliable and educated men and not to the ill-paid chowkidars who totally neglect their duty not realising the advantage. In fact this part of the Municipalities is highly defective and surely needs over-hauling. In view of the importance of birth dates some penalty should also be inflicted on such people who do not get their child entered as soon as he or she is born.

16. Yes, to some extent the difficulty or margin or error in determining the age will be reduced if the age of consent be enhanced to 15 years and upwards. At that age the girl is quite easily differentiated but still I would lay much stress on keeping of the birth registers as suggested above. I can hardly believe that even the doctors can determine with exactness the age of a girl.

17. Of course I would separate extra-marital and marital cases into two different offences and assign different punishment to each of them. It is for the obvious reasons that in the former case the girl being her unlawful wife the offence in that case will be amounted to rape, while in the latter case the punishment awarded should be far more less, the girl being her

lawful wife. I suggest that the following term of imprisonment and fine for each of the offence:—

	Imprisonment.	Fine. Rs.
Extra-marital	6 to 7 years	500
Marital	6 months	1,000

18. I would suggest that there should be difference of procedure of trial within or without the marital state. Both the offences be tried by a first class Magistrate. The marital case should be tried in camera where the public and press be debarred from hearing the proceeding of the Court. In such cases there should not be any hand of the Police which generally make mountain out of a molehill. To ensure more proficiency in the trials of such cases it is also suggested that arrangements should be made to secure the services of women magistrates. In the case of the extra-marital cases there should be the same procedure adopted except that the proceedings of the Court may not be held in camera and the help of the Police should be taken to unroot the cases and bring the same to lime light.

19. I cannot suggest anything but that doctor's test is quite appropriate to find out the real culprit.

20. I am strongly of opinion that the Legislation fixing the minimum age of marriage will prove to be more effective than fixing a higher age of consent. As already pointed out in question No. 3 that such cases very seldom come to light and I say this by my personal experience that once the girl is married she cannot be remained untouched by her husband whether she attains the minimum age of consent as laid down by the law of 1925. There are instances in which highly educated youths have committed such offences not deliberately but out of sexual appetite and their cases have either not come to light or are hushed up by the Police. So obviously fixing of the minimum marriage age will prove to be more useful and beneficial than the fixing of the age of consent. As far as I think fixing of the minimum age of marriage will be in consonance with the people of the Punjab.

21. From my point of view I would primarily prefer to rely on the strengthening of the Penal law to secure the object in view than to achieve the object by social and educational propaganda. In support of this argument of mine I would like to give the instance of the evil custom of Sati which had not Sir William Bentinck stopped it by introducing Penal Legislation it would I am sure have continued to the present day. Similarly if Penal Legislation is not introduced to enhance the age of consent or fixing of minimum age, it will take centuries and centuries when this evil will be entirely abolished. When I give primary place to legislation I give the secondary to education and social propaganda. In fact both these factors should go hand in hand.

Written Statement, dated the 15th September 1928, of Rai Bahadur B. N. SINGH, Superintending Engineer, P. W. D., Punjab.

1. Yes. The law is practically imperative in the case of married people, as no one makes the complaint.

2. As stated above, no complaint is generally made when a man has sexual intercourse with his own wife and she is below thirteen. The only method of stopping the rape in these circumstances is to raise the age of marriage.

3. No remarks.

4. Very few know about the law or care for it. The effective step would be a law preventing child marriage.

5. About 14 years. They attain puberty quicker among townspeople than among village people owing to more healthy conditions in which the latter live.

6. Among the uneducated people in the towns before puberty. Among the educated people and in the villages soon after puberty.

7. Yes, in the case of marriage at least. The orthodox Hindus think that if a girl is married after puberty she cannot be given away as *Kanya Dan*. The belief is said to be sanctioned by Puranas. When once the marriage has taken place, there is nothing to prevent its consummation.

8. Yes. It generally coincides with the consummation of marriage. Not always.

9. No. At least 4 years. The age should be about 18 years.

10. Eighteen years.

11. I have heard of hundreds of cases among my friends and relatives but I am unable to give details. It always results in shattering the health of the girl and producing emaciated children.

12. Yes. It results in all these evils and is the one factor responsible for sapping the vitality and causing degeneration of the whole nation.

13. Yes, among the educated classes generally.

14. Yes, the uneducated and orthodox women do.

15. No remarks.

16. Yes, if the age be fixed at 16 years.

17. If the minimum age of marriage is fixed at 16, there would be no marital offences.

18. No remarks.

19. No.

20. No. The educated public opinion is in favour of raising the minimum age of marriage to 16 years. There is no public opinion among the uneducated. The measure will not be seriously opposed by them.

21. Strengthening of the penal law will be sufficient.

Written Statement, dated the 28th September 1928, of Messrs. GUR-BAKHSI SINGH, Contractor, Lahore, and HARNAM SINGH, M.A., LL.B., P.C.S., Sub-Judge, Gujranwala.

The Age of Consent Laws can never, in our humble opinion, meet the evil of early consummation of marriage. No Indian wife or her parental relatives will ordinarily prosecute the husband who forces early consummation. It is only a well-considered Marriage Law penalizing the marriage below a certain age that can do any good. The minimum marriage age should be:—

For girls 16 years.

For boys 20 years.

Written Statement of Mr. HARISH CHANDRA BALI, Professor of English, Hindu College, Delhi (resident of Pind Dadan Khan, District Jhelum).

I beg to enclose herewith answers to the queries sent by you in connection with the proposed Age of Consent Bill. I belong to Pind Dadan Khan, Jhelum District, Punjab, and so my answers are based on conditions obtaining in my part of the country.

The short note on marriage which is attached at the end of the answers forms the foundation stone of the whole of the superstructure in the matter.

Answers.

1. In my opinion the question of dissatisfaction does not arise; for, somehow or other, people do not feel the existence of the law. The law has not been put into operation very seriously for cases do exist that can be punished under the law, but no one seems to care, so the law has not made itself felt.

If the dissatisfaction means a protest on the part of the females, who, if they have intelligent notions about the matter, ought to feel resentment for putting the age-limit lower than the proper one, then I may say that females in my part of the country are 'dumb, driven, cattle', to be used or misused according to the sweet will of their lords and husbands without even appreciating the privileges or the protection afforded by the present law.

In short, ignorance and indifference on the part of the people, incompetency on the part of the aggrieved party to understand the protection afforded by the law and indifference on the part of the government to make the law effective, have allowed the matters to drift in their own way. Cases of the violation of the law do exist everywhere but no one seems to care for them.

2. I do want an advance on the present law as follows:—

(i) *Rape within the marital state.*—I am positively of opinion that no woman below the age of sixteen (and no man below the age of 25) should be allowed to cohabit.

(ii) *Rape outside the marital state.*—Cohabitation with any woman of any age other than one's married and lawful wife should be considered as an offence and both the parties—male as well as female—should be punished deterrently. The age of consent in such cases is an absolutely immoral device to make men and women fearless of law and fans the lust of immoral connections beyond the limit of the age of consent. However if it be necessary to keep the law in its present form, then 18 should be the minimum age of consent in cases outside the marital state.

If it not be considered irrelevant, I beg to suggest that a separate law should be passed to hold it criminal for any husband to cohabit with his wife before he is 25.

Reasons are given in answers to questions 7, 9, 10 and 11.

3. The crimes of seduction are frequent among the Mohammedans, and the cases of rape within the marital state are also frequent; but the latter are not brought to book. The amendment of 1925 has not been of any effect; for the couple get married before the proper ages and do not desist from having sexual intercourse before the proper age. People go on as usual in blessed ignorance of or in total indifference to the law.

If it be possible and is not considered against the usual practice the law should be broadcasted enthusiastically like the information about the government loans and should be enforced vigorously to bring home to the minds of the people the criminality of the ground covered by the law. The government should depute very reliable and incorruptible officers to look into the working of this law, and a general enquiry should be instituted into the cases where children are born to mothers of less than the fixed age of consent.

Another important suggestion that I beg to offer is the institution of the marriage registers. Every couple should be required to get the age at marriage entered into the registers on some reliable authority. These registers will certainly go a long way in warning the guardians and the husbands against the existence of the law and in settling disputes about age in cases under this law.

4. No, because people do not care for the law. The government has not, within my knowledge, taken note of any violation of this law. Private persons, unless there be bitter enmity between the parties, never complain to the authorities. Then who is to bring to book the cases of rape under this

law? An Indian girl cannot even dream of lodging a complaint against her husband whose slave she is to remain for ever. I don't think there has been any postponement of the consummation of marriage, or stir in the public opinion in favour of the measure, or any material tendency to put off marriages for fear of this amendment; for people do not seem to take note of the law in this connection.

The proper broadcasting of the law and seriousness on the part of the government to unearth and punish the cases of violation of the law are the steps that I beg to suggest.

5. Between 14 and 15. There is no material difference so far as the different castes, communities or classes of society are concerned, excepting that the girls brought up in the refined and fashionable atmosphere of riches and luxury attain puberty at an early age on account of the psychological influences of fine dress, soft living and easy-going life.

6. It is only the low caste and the orthodox people who marry girls before 13. In such cases the married couple do not wait and try to take the earliest opportunity to cohabit for their minds are already made up by what they absorb from their surrounding tendencies. There have been cases where girls below 13 have borne children but such cases have never been brought to the Courts; and who is to do that?

7. Undoubtedly the cursed system of early marriage is attributable to a very large extent to the orthodox religious injunctions which seem to have been formulated in the Mohammedan period when the Mohammedans used to take away the virgins forcibly. The Mohammedan rule is no more, but the bogey of religious curse in this connection lives still to sap the lifeblood of the millions of orthodox people. Some Mohammedans too have caught the contagion by the law of association. The following slokas are the authority which is often quoted to give religious sanction, nay, compulsion, to the evil practice of early marriage:—

अष्टवर्षा भवेद्गौरो नव वर्षा तु रोहिणी ।
दशवर्षा भवेत् कन्या अत उर्ध्वं रजस्वला ॥
माता चैव पिता चैव ज्येष्ठो भ्राता तथैव च ।
वयस्ते नरकयान्ति दृष्ट्वा कन्यां रजस्वलाम् ॥

Thus the orthodox view clearly says that a girl attains puberty at the age of ten and the parents who keep the girl unmarried beyond that age go to hell. But I feel this injunction to be only a time-serving device to save young girls from the oppression of the times.*

8. "Gaona" or what is called "Muklawa" in my part of the country takes place only a month or two after the marriage and where marriage takes place below the proper age or puberty, generally no consideration is paid to this fact at the time of "Muklawa" and husband and wife begin to live together in sexual connection as soon as they can after their marriage.

9. In my opinion no girl should be allowed to have sexual intercourse before 16 (and no man before 25). The attainment of puberty is the sign of the beginning of state of maternity and not its completion. Generally a girl in hot climates begins to show the signs of puberty at the age of 13. But she must wait for marriage for 3 years more as enjoined by Manu:—

त्रीणि वर्षाण्युदोचेत कुमार्यृतुमती सती ।
उर्ध्वं तु कासोदितस्मादिन्द्रेतसदृशं पतिम् ॥

मनुः ८।८०॥

* Arya Samaj, however, is trying its best to counteract the mischievous effects of such injunctions.

"A girl should wait for three years after she has begun to menstruate. After this period she should have a proper husband."

Or no girl can be said to have attained the marriageable age below 16. The opinion of Sushrat quoted below should be considered as final:—

ऊनषोडश वर्षायामप्राप्तः पञ्चविंशतिम् ।

यद्याधत्ते पुमान् गर्भं कुक्षिस्थः स विपद्यते ।

जातो वा न चिरञ्जीवेष्ठीवेद्वा दुर्वलेन्द्रियः ।

तस्मादत्यन्तबालायां गर्भाधानं न कारयेत् ।

which means a girl below 16 and a young man below 25 should not produce children, for doing so they would land themselves in miseries, either their children will not live or if they live, they will remain weaklings.

10. At the age of sixteen.

11. I have not noted any case of the kind but the opinion of Sushrat quoted in No. 9 is an ample justification against marriages before the age of maturity.

12. Yes, the authority of Sushrat quoted in reply to question 9—
जातो वा न चिरञ्जीवेष्ठीवेद्वादुर्वलेन्द्रियः ॥ should be sufficient to justify this answer.

13. As already said in reply to question 4 the amendment of 1925 has not attracted any public notice for people do not fear any prosecution if they go against the law because they know full well that neither the government takes an initiative in such cases, nor the people for various reasons are going to lodge complaints against them. However the spread of education among males and females and the vigorous and invaluable work of Arya Samaj in this connection are the only factors to raise the age of marriage. This rise is general.

14. It is only the parents of orthodox views that favour early consummation of marriage for their children. Educated and Arya Samajic sections of society fully realise the evil of early marriage and its consummation before the proper age.

15. I cannot say much about it. But the Register of Marriage which I have already suggested would be the best means to avoid any difficulties that may arise in this connection.

16. I have nothing to say on this.

17. Yes, extra-marital rape, which, in my opinion, should not enjoy the privilege of the freedom of will on the part of the girl beyond the age of consent, but should be an offence whenever a man of any age cohabits with any girl or woman not his married and lawful wife should be punished only with the rigorous imprisonment for five years and some measures for the correction of the offender should be taken from a philanthropic point of view. The marital offences should be traced out vigorously, but should be punished only with rigorous imprisonment for 2 years. Any punishment heavier than the above seems to be too much for this most common and natural weakness of man.

18. I can't say anything in this connection.

19. I am not much in touch with the legal aspect of the matter and so have no suggestions to make.

20. Personally I don't attach much value to the age of consent for marital cases, for no one seems to look into such cases. The law remains a dead letter. The only way to check the evil is to fix such a minimum age of marriage as may include and cover the age of consent proposed to be fixed in such cases. The public opinion in my part of the country would favour legislation fixing the minimum age of marriage.

21. Social reform and education are, no doubt, doing much in this connection, but still there is a very large section of the orthodox people who are beyond the reach of these healthy influences. Nothing short of strict and unrelenting laws can correct the tendency which they have inherited from the past. I consider such measures of humanitarian nature the most legitimate province of law. We, in India, must follow the examples of Mustafa Kamal, Amir Amanullah and the Italian Dictator to do away with the evils that are eating into the very vitals of humanity.

Hence the law:—

- (a) Should prevent any man and woman from marrying before the ages of 25 and 16 respectively.
- (b) Should disallow the admission of any married young man or girl to school and college.
- (c) Should hold it criminal for any man to cohabit with any woman excepting his own legal and lawful wife.
- (d) Should institute Marriage Registers for the entry of the ages of the couple at the time of marriage.

A note on marriage.

Marriage according to the Hindu Sastras is a sacred ceremony which puts on the married couple the duty of producing such children as may add to the strength, greatness and beauty of human life. It is not to satisfy the mutual lust, but to bring together a male and a female who should serve as friends, companions and guides for each other and who under Sastric injunctions and with proper preservation of their procreative vitality should leave behind them such representatives on earth as may be worthy members of human race.

Thus to my mind the only idea behind cohabitation should be the fashioning of a human being who under the psychological and physical influences of the 'sanskaras' pertaining to *गर्भाधान* should be a boon and a blessing. So any act of cohabitation between man and woman for lust and passion should be taken to be a violation of the sacred ideal of marriage and hence illegal. It must be taken as an offence. Marriages in these days when men and women have cohabitation as the chief object are nothing short of legalised prostitution, wife serving as the means to satisfy the lust of a man. The correct use of marriage is something very difficult and means a fight against the most powerful instinct in man from a very high and idealistic point of view.

Then it is clear that no marriage should be allowed where the age of the boy is less than 25 and that of the girl is less than 16, for this is the minimum limit when a man and a woman can be said to have achieved the age of physical maturity and intellectual development for the production of children.

Because the ideal of marriage is only the production of children, so the Hindu Sastras allow *अश्रित* the cohabitation of a woman with a man other than her married husband with the express permission of her husband. This sort of cohabitation should not be considered as offence and should be considered quite lawful. This is quite an important point which ought to receive due consideration from the legal authorities.

Written Statement of Mr. RAM SWARUP, B.A., LL.B., Advocate, President, Arya Samaj, Rohtak.

1. Yes. But it is confined to the educated classes. The man in the street knows too little about these sections to be dissatisfied with them.

2. The circumstances which in our opinion justify making an advance on the present law are:—

- (a) spread of education,
- (b) the general rise in the age at which girls are married now-a-days,

- (c) a tremendous increase in cases of seduction,
- (d) the facilities which modern style of life and improved methods of communication offer to the seducers,
- (e) a general awakening towards the helpless condition of young girls.

3. Crimes of seduction are very frequent in this part of the country and the amendment of 1925 has not succeeded in the least in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. In our opinion the only effective measure would be to penalise all intercourse with a girl of less than 16 years of age.

4. No. In our opinion the minimum age of marriage for boys and girls should by legislation be fixed at 25 and 16 respectively.

5. Fourteen is the usual age without distinction of castes, communities or classes.

6. (1) No.

(2) Among Hindus cohabitation soon after puberty is very common.

(3) No.

These cases do not come to Court.

7. Not so much to religious injunction as to a false sense of respectability on the part of the parents of the girl and a desire of getting a male offspring and an unpaid servant on the part of the parents of the boy.

8. Gaona is usually performed in our part of the country. Except in rare cases it always coincides with consummation of marriage. It is performed generally on the very first appearance of the signs of puberty.

9. Not in the least. At the age of 16.

10. At the age of sixteen.

11. We have a daily experience of such cases even in our own family. Anæmia, sickly offspring, miscarriage, still-birth, premature birth, loss of lustre, slackened muscles, fleshy bodies, premature decay and consumption are the usual results. Concrete cases are reserved for oral examination.

12. Yes.

13. Only the educated classes understand the subject and they are very keen on an extension of the age of consent in both classes of cases. The general public is only alive to the necessity of raising the standard of marriageable age. The spread of Arya Samaj in this part of the country has resulted in a vast development of public opinion in favour of the latter.

14—15. Yes.

The child is named six days after its birth. The birth register does not show the name of the child, hence the difficulty in establishing the identity of the child with the entry and the possibility of fraud and perjury. We would suggest that a column of name should be provided for in the register of births and it should be the duty of some official to fill in the column the name of the child and get the entry attested by the guardian of the child.

16—17. Yes.

We would like to leave the schedule untouched so far as extra-marital offences are concerned but so far as marital offences falling under section 376-A are concerned we would like to suggest that rigorous imprisonment should not be provided for until an age limit is fixed by statute for marriage both of boys and girls.

18. Offences within the marital state should be tried *in camera* and with the help of a jury.

19. No.

20. Fixing the minimum age of marriage.

21. We would prefer to rely on the strengthening of the penal law.

Written Statement, dated the 11th February 1929, of Mr. JAGDISH RAI GUPTA, Mukhtar, Mansa (Patiala State).

1. In first place I think that law should be made and must be obeyed as other laws are and it must be compulsory.

2. The age of girl and boy be fixed as 14 and 22 respectively for marriage purposes and age of consent for girls ought to be 16.

3. As regards penalty I think fine of Rs. 50 for the first fault, Rs. 100 for the 2nd and Rs. 200 for the third. If still there be any breach the accused may be given 2 months' simple imprisonment.

4. As the Committee has to give its report shortly some alterations I propose to be effected, otherwise the above law shall be ineffective.

5. In first instance an officer should be appointed in every district.

6. This system of registration of births is most defective and incomplete. There is no name of the child now in the birth register. After *Nam Karan Sanskar* the parents should be bound to report the name of the child to the registrar's office—its sex, number of the child. If there is no ceremony of naming the child the report ought to be made after 14 days from the date of birth to the registrar's office. A birth certificate should be issued from the registrar's office (this will be useful to the child in his education, insurance for registering his name in the University registrar's office and the insurance offices). There are hundreds of cases in which age question is involved and often culprits go scot free.

7. I hope by adopting these rules crimes will be detected and offenders shall be punished and offences will be reduced to great extent in few days.

8. Similarly all marriages should be registered. The marriage register should be signed and attested by the priest, moulvies or other two respectable persons who may be present at the time of the marriage to the parties concerned and to the community to which the parties belong. This will save the minor girls being married several times to different men. At the time of marriage the birth certificate should be signed counter and the date of marriage be inserted on it.

9. If there is one or more marriage of man or woman they should be stated in the birth certificate. In cases of maintenance and restitution of conjugal rights, the law should prove a great boon.

Written Statement (in vernacular), dated the 27th July 1928, of Mr. ATA MOHAMMAD, Pensioner, Sialkot.

1. Age of puberty bears an intimate connection with the climate of a place. The hotter the country the earlier the age of puberty. In hot places that age is between 10 and 12, in temperate between 13 and 14 and in cold places it is between 16 and 17 years.

2. In cases where for some special reasons the marriage takes place before the girl reaches the age of puberty the 'Gaona' ceremony is postponed till the girl attains that age and becomes a major. In the case of grown-up girls the 'Goana' ceremony is coeval with the marriage ceremony. The same custom obtains in all castes and communities both in towns and villages.

3. The Mohammadans act according to the dictates of their Prophet, Mohammad Sahib, i.e., marriage ceremony takes place as soon as the girl shows signs of puberty.

4. The Mohammadans do not send the girl to the husband's house, even if the marriage has been celebrated, until and unless the father of the girl can afford to give a good dowry or the husband becomes self-supporting.

No legislation is necessary as their religion is enough to regulate their religious ceremonies and any attempt on the part of the Government to promulgate new laws will be resented by the Muslim public and regarded as uncalled-for interference with socio-religious customs of the people. If the Hindus desire such legislation it should be confined to them. For Mohamadans their own law is quite sufficient.

5. Mr. Ata Mohammad does not ascribe the deterioration in the health of the nation to early marriages but considers that it is all due to poverty, utter disregard of religious injunctions, want of self-control, giving free play to wild passions and consequent multiplication of children. The husbands have generally to leave their native place in their endeavour to make both ends meet and the children and wife are compelled to resort to labour in factories where the sordid conditions of work are much too notorious to need any recapitulation here. All this tells heavily upon their health.

6. The Hindu social code is astoundingly strict and among the Hindus the custom of early marriage is due to the minute details of castes, sub-castes, 'gotras', etc., which they have to observe. The parents for fear of not getting a match who would satisfy all those conditions marry a girl as soon as one is found, young or old. The age of the girl is no consideration at all. These restrictions are imposed by religion and religion alone can remove them. Legislation is likely to be resented.

7. It is very rare indeed that cases of rape upon a young wife are brought to court, and not more than 1 per cent. cases are reported.

8. Penal legislation is not regarded by Mr. Ata Mohammad as the panacea for all these social evils, but he relies upon social propaganda to root out these evils.

9. Mr. Ata Mohammad regards religious injunctions in the case of Mohamadans enough and thinks that those who do not follow them are suffering from the inevitable consequences. He quotes, for instance, the Pathans who, against the dictates of their Founder, have imposed an undesirable restriction that the girl is to be sent to the husband's house only when the latter pays a fixed sum of money and the result is that they have sown the seed of such most reprehensible evils as sodomy and prostitution. Penal legislation against the dictates of 'Shariat' is bound to encourage adultery.

NORTH-WEST FRONTIER PROVINCE.

Written Statement, dated the 20th August 1928, of S. DIWAN SINGH, President, Shri Guru Singh Sabha, Peshawar Cantonment.

Without attempting to reply to the Questionnaire in the order in which the questions are put therein, or to answer all the questions contained therein, I may be allowed to point out that the Sikh Community as a whole considers it but just and proper that the Age of Consent should be raised to at least 16 years, and legislation should be resorted to for penalizing marriages below 16 years. The girls do not attain puberty before 15 years and in order to be fully developed and matured marriages for at least one year after that age be countenanced. The social custom of seclusion of women makes it very unlikely that the girls below 16 years can give any intelligent consent to cohabitation with a due realization of consequences. The early marriages are certainly responsible for the death of infants and child mothers due to the immaturity of the latter. Early legislation on the above line is mostly desired.

Oral Evidence of Sardar DIWAN SINGH, President, Shri Guru Singh Sabha, Peshawar Cantonment.

Peshawar, 22nd September 1928.

Chairman: You are the president of the local Singh Sabha?

A. Yes.

Q. May I have the pleasure of knowing your name?

A. Diwan Singh.

Q. We are told that there are two Sikh Associations, the Siromani Gurdwara Parbandhak Committee and the Chief Khalsa Dewan.

A. Yes.

Q. To which is this Sabha affiliated?

A. To the Chief Khalsa Dewan.

Q. On this particular matter about the Age of Consent is there any difference between the two?

A. No.

Q. You have said in your statement that the age of consent should be raised to 16 years and legislation should be resorted to for penalizing marriages below 16. Do you recommend both these courses or you regard the one more important than the other?

A. I believe the fixing the minimum age of marriage is more important than the age of consent.

Q. Will you please tell us why you think so?

A. Well, consent may be obtained with motives and personal ends and who knows behind the consent there may be so many things working for making the girl consent to what she should not. So it is left to the elder members of society to fix the minimum age of marriage. That would be more effective.

Q. Could you tell us of the conditions existing amongst the Hindu residents here beyond this district?

A. Well, it is only a second hand knowledge gained from Hindu friends. As a matter of fact at this time Hindus too are in favour of marrying their daughters when they are grown up with the exception of certain very orthodox people. I think, however, the modern tendency is to marry girls late.

Q. During how many years past have you noticed this tendency?

A. I should say there is more and more tendency during the last 10 years or so. 20 years back the case was different. For the last about 15 years there has been a marked and perceptible difference.

Q. Do you think there is a certain number of people who still have child marriages?

A. They will continue to be. You cannot convert the whole mass of population to one way of thinking.

Q. What proportion has been affected in favour of advanced age? Is it a small percentage or a big percentage?

A. I should say a very large percentage.

Q. What about the villages? Is it the same among all populations?

A. In villages we are already practising late marriages. It is only in the cities that there is this most vicious atmosphere and people like to marry their daughters earlier and limit their advancement and education.

Q. Do you think that is confined to Peshawar alone or to any other big places in the North-West Frontier Province also?

A. Peshawar is the citadel. Dera Ismail Khan is more advanced than this place. People are more educated and they are financially better too. They come more into contact with the Punjab side.

Q. Is there Maklawa ceremony amongst the Hindus or amongst the Sikhs?

A. Maklawa ceremony prevails in the Sikhs of the Jat tribes. Agriculturists also have retained that custom on account of its usage and on account of its motive primarily. I believe it is a Jat custom confined more or less to agriculturists. They only practise it. It is nowhere in the urban area. In Lahore or Amritsar there is no Maklawa. Outside in the villages there is Maklawa amongst the agriculturists as well as among the non-agriculturists like Aroras and Kashytrias. Among the Sikhs they keep their girls unmarried up to 15. That is the prevailing idea. There is no religious injunction or prohibition or any law. That is the practice. To keep a girl unmarried till 15 or 16 is nothing extraordinary.

Q. We have been told that if we increase the age of marriage say up to 15, 16 or even 14 as is proposed there will be an amount of immorality, that is the girls are likely to go wrong. Is that a fact amongst the Sikhs where girls are not married till they are 15 or 16?

A. I don't think so. I think there may be a certain amount of scandal coming through it. In time people will get more and more used to it.

Q. Do you think there is a likelihood of any serious dissatisfaction amongst the people who have early marriages if a law is enacted prohibiting marriages or penalising marriages below 14, for instance?

A. Many things are possible in India. People do not understand what is for their good. It is the duty of the elders to throw a bitter pill down the throats to cure their disease.

Q. Do you think, in spite of dissatisfaction Government would be justified in making an advance?

A. Dissatisfaction there will be and bound to be. But still people will get used to it. They will realise the benefits. So far as the Sikhs are concerned they will welcome it.

Q. How many members are there in the local Sabha?

A. It has got a very large membership. There are about 200 standing members.

Q. Have you any knowledge about the Mohammadans in this part of the country?

A. I only know what I have gathered from friends and personal observation.

Q. Are marriages performed early or late amongst the Mohammadans?

A. In towns I don't think there are early marriages. In towns girls are married always when grown up. In villages of course there are some low people among whom there is a custom of purchasing wives. They sell daughters when grown up. The higher the age the better the price.

Q. Is that found in all classes?

A. That is among low class people, among Kamins and some Afghan tribes. It is not a question of fetching price. They get rice, butter and money and they feel proud. It is a question of honour. That is how they advocate that immoral practice.

Q. What would you put the age limit at in the case of unmarried girls?

A. I don't think marriage should be a license for adultery. If 16 is the age let it be 16 for all. There should be no distinction. Why should he get a license by getting the privilege of having been married?

Mr. Kadri: You are in favour of raising the age of marriage. We are told that the orthodox section would rather prefer the raising the age of consent than the age of marriage.

A. That is a very weak safeguard, so far as I think. The orthodox do not understand. I don't believe a girl is going to haul up her husband in a court of law. She does not want to spoil the rest of her life. After all she has got to live with that man and cannot misuse the privilege. Among the Mohammadans also I think, there is no religious injunction. Marriages are celebrated among the Mohammadans when the girl is grown up and knows what is good for her, whether the husband selected for her is suitable, although in most cases in India they have to say 'yes' when they should have said 'no'. Their consent is taken for granted. She is not allowed to live with her husband before marriage. I don't believe in the age of consent only. I definitely believe that the age of marriage must be raised and fixed.

Q. Do you think that by raising the age of consent we shall be further strengthening the marriage law if one is made?

A. I believe so.

Q. Do people generally know what the age of consent according to the present law is?

A. Some people know it and others do not. I do not believe there has been any case brought up before the court. It is only a case of very grave injury that ever comes to the court.

Q. You know according to civil law the age of majority is 18. Having that in view would you still have the age at 16?

A. I think 18 would be much better.

Q. What is the Sikh population in Peshawar?

A. It is about 3,500 to 4,000, out of a total of about one lakh.

Q. What is it in the whole of the Frontier province?

A. About 37,000.

Q. I want to have an idea of the sex atmosphere which prevails here. Is there any danger to girls going about in the streets here?

A. In that respect there is very little difference between the Punjab and this place.

Q. We have been told that marriage is a protection against danger and that a married girl is more protected against danger than an unmarried girl. Is that so?

A. There are other reasons for that. A married girl's movements are limited and are being watched. Whenever she goes out she is generally being accompanied by somebody. Probably she wears more jewellery and she is more cautious. She is watched by two parties after the marriage, her parents and her parents-in-law.

Q. Are crimes of seduction occasionally taking place in these parts?

A. Yes, but that happens in special circumstances.

Q. Does marriage make any difference in these cases.

A. It is always forcible but not with consent. Mostly a non-Muhammadan population is over-powered by a Muhammadan population in the villages. People are ignorant and they consider a boast to abduct girls. No difference is however made between married and unmarried girls.

Q. Abductions sometimes take place for the purpose of marriage. Do you not think that in such cases there is less danger of abduction if the girl is married?

A. No, it does not make any difference. Supposing a Hindu girl is abducted. She is married to a Muhammadan and it is announced that she has embraced Islam. For her relatives she becomes an outcast. Even if the husband wishes to sue her for conjugal rights, the relatives say that she has become an outcaste and that she is free to marry. There it is all the same whether she is married or unmarried.

Q. Do you believe that the practice of child marriage is due to the belief that a married girl is more protected than an unmarried girl?

A. Yes, I should think that a married girl, as I have already pointed out enjoys more protection.

Q. Have you reason to believe that offences do take place under the present law in the case of husbands?

A. If the girl is married before the age fixed, I do not think she is protected by law. The girl usually goes to her husband immediately after marriage. If Muklawa system is in vogue it would be different, but that system does not prevail here now.

Q. If the marriageable age is fixed at 16, you do not require an age of consent act because you cannot fix the age in that case higher than 16. But supposing the law regarding marriage is not possible, would you recommend the age of consent?

A. I do not think that the law will be of any use in that case. You should leave it to the moral good-will of the people.

Q. Supposing in intra-marital cases the age of consent is fixed at 16, will it be effective?

A. But who is going to be the complainant?

Q. In such cases what would you suggest as regards complaints?

A. I do not believe any purpose will be served by the law. The wife will not complain. The relatives will not complain for fear of embittering relationships.

Q. Supposing the power to make complaints is given to some recognised organisations such as the Singh Sabha, will the law be effective?

A. Organisations after all, consist of members of society, and who is going to complain? Members of the organisation will have their own relations and friends and nobody would like to bring an action.

Q. Do you not realise that it is necessary that the age of marriage should be fixed at 16 in the present circumstances?

A. I do, and I would suggest that good measures such as this should be enforced.

Q. Supposing it is not possible to get any legislation regarding the age of marriage passed, would you suggest any other alternative?

A. No, there cannot be any half-way house. Either there should be a legislation which would be effective, or no legislation at all.

Mrs. Nehru: Do you think public opinion is very much in favour of raising the age of marriage?

A. Yes, educated public opinion.

Q. If it is so, is it sufficient to support those societies which undertake to prevent child marriages or early consummation of girls?

A. Yes.

Q. Then why do you say that if the right to complain is given to these societies the law will not work?

A. People do not mind advocating the principles, but when things become personal, and complaints become personal, it becomes a matter of sympathies.

Q. If the feeling is genuine and if people really desire that the age of marriage should be raised, then why do they not take any steps to make the law effective?

A. I do not doubt the intentions of the people, and the feeling is genuine. But we have got to take into consideration human frailties and weaknesses.

Q. Does it mean then that people have not got the courage of their convictions?

A. I do not doubt that the conviction is irresistible. But human tendency generally is that one should live and let live.

Q. Are the activities of your organisation social or religious?

A. They are social as well as religious.

Q. Do you do any propaganda work?

A. Yes, we do proselitisation work also. We do propaganda work against early marriage and purdah and in favour of female education.

Q. Can you tell us whether people here observe purdah?

A. Certain tribes do, and certain others do not. Among the Muhammadans certain tribes like the Afridis do not observe purdah. Their social laws are very stringent, and violation is visited with capital punishment. They take the law into their own hands.

Q. How do they take the law into their own hands?

A. After all there are some social sanctions which have the force of society behind the law. They have got a system of Jirga or trial by a Council of Elders. These things are decided by force of custom.

Dr. Beadon: What is Jirga?

A. Jirga is a Council of Elderly men, chosen from villages about 25 miles from the place to which the offender belongs appointed to try the case against the offender. Even in cases where the sessions court in a British territory fails to prove the case against the accused, the criminal is handed over to the Jirga.

Mrs. Nehru: Is the custom of early marriage prevalent amongst these people?

A. Yes, they think that a husband should bring up his wife according to his own ideas.

Q. Are crimes of abduction and rape very common here?

A. There is nothing extraordinary except that in villages where the population is predominantly Muhammadan, the small Hindu population is victimised. Amongst Muhammadans themselves, it is very common to give very handsome dowries and other things. In order to avoid paying dowries some

parents allow their daughters to elope with some one and then there is a sort of compromise and marriage takes place and the parents of the girl do not spend a pie on dowries. Sometimes when the parents of the girl cannot get a suitable match this is encouraged. I know that in Shahpur district they encourage a thing like that.

Mr. Kadri : Is it a conjecture?

A. No, I have lived in Shahpur district for two years and I have known of several cases like that.

Chairman : In what capacity were you at Shahpur?

A. I was a teacher.

Mrs. Nehru : What is the state of education among women in this part of the country?

A. Amongst Hindus and Sikhs they are mostly literate. The percentage of the literate women will be fairly 80 to 90 per cent. Amongst the Sikhs alone the percentage will be 95. There is hardly a Sikh girl who cannot read.

Q. Is infant mortality very high in your province?

A. It is.

Q. What is it due to?

A. Some are due to early marriages and certain others to unhygienic conditions. Also girls do not get proper education for bringing up children.

Dr. Beadon : Do you think registration of marriages will help in fixing the age of girls?

A. Yes, statistics will help. Government will have a record of the parties marrying. There will be a declaration of marriage at the time of the marriage and mischief will be prevented.

Q. By whom should the registration be made?

A. By the municipality.

Q. Who would report it to the municipality?

A. We ourselves can do it. There are many things which we do for our own benefit but we inform the municipality about it. This can be done in the case of marriages also. In the villages the parents will report to the Mohulladars and the Mohulladars will report to the record keepers.

Q. Has the registration of births been satisfactory. Have you had cases in which there has been trouble about ascertaining the age?

A. People are conscious of the need of knowing one's own age. Formerly there were horoscopes, but even now people realise that the days on which they were born and their children were born should be recorded and kept so that they may celebrate birthdays, etc.

Q. How long has that consciousness been growing?

A. It is fairly grown up now. Educated people keep such records. In the villages, District Boards keep such records.

Q. We have been told that in many cases there has been difficulty in establishing the identity of girls. Is that so?

A. Yes, because the names are given after several days. In Europe and other civilised countries parents are anxious to prove the identity of their children, to prove the nationality, etc. The method that is adopted in Europe can be adopted here. I have got no reasons to believe that the records are incorrectly kept here, but the system can be improved.

Q. Do you know of any cases of injury or damage to the girl by early consummation?

A. The fact is advertised through the progeny. It does not require any other proof than the fact that Indians are degenerating. People may attribute it to more than one cause, but still this may be the primary cause. If a girl is weak after delivery, it is due to early marriage and lack of development. Doctors may say that it is phthisis.

Written Statement of Dr. PARMA NAND, Superintendent, Jail, Bannu.

1. Yes, the dissatisfaction is due to the society having progressed, the people having become more educated and thus being able to realise the disadvantages of the age of consent limit as laid down in the existing law.

2. The circumstances which in my opinion justify making an advance on the present law are :—

(a) *Debilitated Motherhood*.—My experience as a Doctor and otherwise tells me that there is no girlhood in India. From childhood the female passes to womanhood or even into motherhood without passing through the stage of girlhood as in the West. Girls are married very early even before attaining puberty and within a few months after the ritual they are put in the family way at a stage when the womb is not fit to perform its normal function. This tells upon the health of the poor woman and in many cases she cannot stand the confinement, if she survives she lives in the world as an invalid mother (unfit for service) but made to perform all her duties as long as she is alive.

(b) *High Infantile Mortality*.—Children born of women as described in (a) above are either born still or die very soon after birth. If they live they are chronic invalids and provide work for the hospitals. They are classed as—

(c) *Weak Progeny*.

(d) *Offences* such as murder, hurt or rioting due to rape of girls with immature understanding as to the nature of the act to which they consent.

3. Yes. Seductions are very frequent and sometimes they are accompanied with rape as well. Cases of rape (without seduction) are not so common. The raising of age of consent to 14 years has not succeeded in reducing the number of seduction or rape cases. The law could be made more effective by publishing and widely circulating its aims, objects and underlying principles amongst the masses.

4. No. The raising of the age limit from 12 to 13 for protecting married girls is ineffective because the difference only of one year is imperceptible at that stage, besides it is difficult if not impossible to differentiate between girls aged 12 and 13, especially in Urban areas and girls of rich families.

The steps which will make it more effective are :—

(a) Raising the age of consent in the case of married girls, and

(b) Penalizing infant and early marriages.

5. The usual age at which the girls attain puberty in these parts is 13 to 15 years. It differs in different cases, earlier in the case of Urban girls, Pardah girls and daughters of well-to-do people (13 years) on account of social intercourse with married women, rich food, less work, want of adequate exercise. It is delayed in the case of village girls, school girls and those from middle and poor classes of people (from 14 to 15 years) the condition of life being reverse of those stated above.

6. Yes, it is common under all the three heads amongst the high caste Hindus in cities on account of early marriage. It is not common in low caste Hindus, because they cannot afford to give away their girls in marriage at an early age. Very rare cases come to court.

7. There is no religious sanction behind the practice of early consummation of marriage at all in these parts of the country. This practice originated with certain social reformers of the Moghul period as a defence against very frequent kidnapping and abduction of young unmarried Hindu girls by Mohammadans. Since then it is coming down through wrong tradition, less education, superstition and the high mortality of young mothers leaving girls unlooked after and forcing other relatives to get rid of them by marriage as soon as possible.

8. No.

9. No. I consider puberty as only commencement of the physical development and making of a girl. At 18 in towns and at 20 in the villages the girl's physical development could be enough to justify such consummation without injury to her own health and that of her progeny.

10. After 16 in towns and after 18 in villages.

11. Yes, before puberty—

at 12 rupture of uterus with death. Kohat city Hindu married girls due to cohabitation of husband aged 25.

at 14 Hæmorrhage on 1st coitus with sterility for life due to cohabitation of husband aged 30.

12. Yes. The children born of parents before attaining complete maturity of body and mind are walking hospitals and a burden to society from being physical and mental wrecks.

13. Yes. It is general amongst Hindus, there is very little difference between the educated and uneducated on this point in this part of the country as they are not very orthodox.

14. Yes.

15. On this side cases of rape with consent of girl (under 14) are rare and cases of rape by husbands in this part of the country very seldom come to courts. Therefore the difficulty of determining the age for this purpose has seldom been experienced.

16. Yes. If the age of consent raised to 17.

17. Yes, punishments suggested in the proposed amendment is quite sufficient.

18. Yes. Offences against husband should not be cognizable, but if police investigation be necessary it should not be conducted by an officer below the rank of Deputy Superintendent of Police. They should be triable by District Magistrate or Court of Sessions.

19. The answer to question 18 above covers this. Spread of education amongst people will raise the standard of responsibility, sensibility and also public opinion.

20. No. I consider that fixing the minimum age for marriage would be more effective than the fixing higher age of consent for marital cases. This is in consonance with the public opinion in these parts.

21. Both. Spread of education and social propaganda can undoubtedly do more good than penal law alone, but in the present state of darkness, ignorance and superstition, penal law should be made to go hand in hand with the social measures to gain the object in view.

Oral Evidence of Dr. PARMA NAND, Superintendent, Jail, Bannu.

(Peshawar, 24th September 1928.)

Chairman : How long have you been Superintendent of Jail, Bannu?

A. I have been Superintendent of Jail since 1923 for about 5 years.

Q. May I know your personal qualifications?

A. I passed L.M.S. (Punjab) in 1911 and was Assistant Surgeon in this Province up to 1917. Then I went to the Army and remained there for 2½ years during the Great War. I went to England in 1919 and got a diploma in Public Health (D.P.H.) and also studied the Tropical Medicine (D.T.M. & H.). I also did post-graduate work in other branches. Then I started private practice in Hampstead (London) and also did work as medical officer of child welfare centres in London. I returned to India in November 1921. I was appointed Health Officer, Dera Ismail Khan, and then as Civil Surgeon, Dera Ismail Khan, and Superintendent of Jail, Bannu.

Q. During the last 7 years on return from England have you had any dealing with the town people or village people?

A. I was dealing with both classes of people. I live in the city but I have been visiting villages also.

Q. Do you know the conditions among the Mohammedans, Sikhs and Hindus?

A. Yes.

Q. Do you think that the minimum age of marriage would be more effective than the age of consent?

A. Yes.

Q. How much would you put it at?

A. 16 in the case of towns and 18 in the case of villages.

Q. You think that a girl will be able to give an intelligent consent with due realisation of consequences at 16?

A. Yes.

Q. Would you put the age of marriage at the same limit?

A. Yes, it should not be less.

Q. Do you think this age will meet with opposition from the Sanatanist quarter?

A. Yes, there is always opposition to a new measure.

Q. Do you think there will be opposition because it will be a new measure?

A. Yes.

Q. Why do you think that the law of the age of consent has been ineffective?

A. Because people do not know. The other day I went to a village and asked a man whether he knew what the age of consent was and he said "I never heard of such a thing". Even in the towns with the exception of lawyers and those people who read newspapers, the public do not know about the existence of this law.

Q. You have said that the age at which girls attain puberty is about 13 to 15 years. Do you think that if the age of marriage is put after 16 years there will be any more danger to the girls than it is now?

A. I do not think so. I look upon puberty as the commencement of development. It is just like a baby getting teeth and the sign of the first tooth is not the sign that a baby can be fed on everything.

Q. How many years would you wait after puberty?

A. At least 2 years. There is another point—a boy becomes a man of his accord but a girl does not become a woman so long as she is not touched by the hand of a man.

Mrs. Nehru: You mean to say that she remains innocent of all sexual desires?

A. Yes, absolutely innocent.

Chairman: You mean that her desires are passive and those of a boy active?

A. Yes, but I have not gone deep into this question. In England I was staying side by side with lady students and I found that some of them were absolutely innocent.

Q. Do you think the age of marriage has gone up in the towns among the educated classes during the last 5 years?

A. Yes, it is going up. I may tell you a very recent case against it. On Friday last there was a marriage in Bannu city between a child of 2½ years and a boy of 14 years. This was in Arora Hindus. The circumstances of the case are that in this part girls are sold and the father of the boy sold his daughter of about 14 years for Rs. 2,800. At the same time he wanted a wife for his boy and bought this 2½ years' old child for Rs. 700. The father of this child happens to be an old man and in very poor health. If the girl

is left with the old man and if he dies, the widow may give the girl to some other man.

Q. Do you think there are many cases of this kind?

A. No, such cases are rare. I came across this case after about 4 years.

Q. Do you think it is exceptional?

A. The circumstances show that it is exceptional. Child marriage is practically dying out in these parts.

Q. Would you make any difference between child marriages in rural areas and urban areas?

A. No.

Q. Do people generally marry at the same age?

A. Child marriages in Bannu and Waziristan do not exist.

Q. Not even among Hindus?

A. Some high class Hindus do it but very rarely.

Q. And in the lower classes?

A. In the lower classes there is no child marriage except in special circumstances.

Dr. Beadon: In answer to question No. 11 you have given cases in which the girls sustained injury. Had the girl attained puberty in the first case?

A. There was no puberty in that case.

Q. Was there great injury to the parts of the child after cohabitation?

A. Yes, the uterus was ruptured at the first coitus.

Q. Have you personal knowledge of these cases?

A. This was told to me by a lady doctor. The girl was brought to the hospital in the morning and she died within 24 hours.

Q. How long ago did this case happen?

A. It was in 1911.

Q. Did the other case of hæmorrhage happen recently?

A. That was in 1912.

Q. Have you come across any recent cases of injury?

A. No. In recent years we have got lady doctors almost everywhere and such cases do not therefore come to our notice.

Q. In your practice you must be meeting lady doctors, what do they tell you?

A. Yes, they tell me that there are good many cases of these conditions.

Q. You say in answer to question No. 12 that children born of parents before attaining complete maturity of body and mind are walking hospitals and a burden to society from being physical and mental wrecks. Can you give us any details from your personal experience?

A. I know so many cases that it is difficult to give any specific instances. There are too many to count.

Q. This is in spite of the fact that the marriageable age is going up?

A. It is going up in those parts. This is about Peshawar; in Peshawar the marriage age is very low.

Q. Do you think there is any difference between marriageable ages of Mohamedans and Hindus?

A. Yes, Mohamedans marry at an older age. In Bannu there is a difference of about 4 years.

Q. Do you think that conditions are better in Bannu than in Peshawar?

A. Yes. As regards marriages you will be surprised to know that there is widow remarriage in Bannu. It already exists among all classes of Hindus. There are certain people who do object to it, but the majority do not.

Q. How many cases of widow remarriage occur in a year?

A. There may be one or two exceptions but otherwise all are remarried. Widows below 10 are not married?

Q. Are those girls married later on?

A. Yes. Widows generally are married within a year after the death of the husband.

Q. Is that the general practice?

A. Yes.

Mrs. Nehru: You say in reply to question No. 1 that there is considerable discontent amongst the people. Can you tell us on what ground it exists? Is it merely on the ground of a low age of consent?

A. Yes.

Q. In what form it has been expressed? Have you heard of any meetings taking place and resolutions being passed?

A. No, I gathered it from private talks.

Q. And you found that they wanted to raise the age of consent?

A. Yes.

Q. You have said that even at present girls marry below the prescribed age. If there is so much desire among the people to reform why do they not act up to the age limit which is prescribed by the law?

A. Because it is not known to them. People generally do not know the existence of the law at all.

Q. Among whom then does this dissatisfaction prevail?

A. It is among the educated classes.

Q. Do they want the raising of the age of consent or the fixing of the marriageable age?

A. They want the age of consent raised.

Q. Do you think this law so far has had any effect?

A. No.

Q. Do you think it would have more effect if it were generally known?

A. I think so.

Q. Why do the people not bring these cases to light?

A. A Hindu would not like to bring any case to court for fear of shame and dishonour to the family. He would not like to make the case public, because he will have bad name amongst the people with whom he mixes.

Q. Supposing the punishment is lightened will that facilitate the working of the law?

A. No. So long as the masses are in their present condition of ignorance and superstition, I do not think it will have any effect.

Q. Can you suggest any method whereby the provisions of this law can be made effective?

A. You should have somebody or some people who should bring these cases to light and explain to the parents that anybody who has done any wrong should be punished.

Q. Should those bodies be from the public or from the Government?

A. From the Government, or if it is taken from both the public and the Government it would be better. We people are generally backward in that respect. In the present circumstances the law therefore requires to be enforced, and in the enforcement there must be somebody to bring the cases to light.

Q. Would you recommend that the offence should be made cognisable?

A. Yes.

Q. Do you think that our police are competent to take up such cases?

A. I have suggested that an officer not lower than the Deputy Superintendent of Police should be allowed to conduct the investigation.

Q. We are told there are a great number of rape and seduction cases here. Would you tell us the ages of the girls raped and seduced?

A. Generally it would be between 10 and 15. It is not easy to find out the age of the girls.

Q. If the age of consent outside the marital relations is increased, would it give sufficient protection to the girls?

A. Yes, in some cases. But under the existing law after 16 a girl has got a right to exercise her own will, and if she runs away with somebody the parents of the girl will have to make a complaint saying that she has run away with jewellery, etc.

Q. In paragraph 6 you say that consummation of marriage is common under all the three heads. Do you mean to say that it is common before puberty?

A. Yes, before puberty only among high class Hindus.

Q. Do you think that by raising the age of consent this evil will be reduced?

A. Yes.

Q. You have given us one reason why such cases do not come to light. Can you give any other reason?

A. One reason is family dishonour and it is the chief reason. You can put general ignorance and superstition as another reason. For instance, in the jails if you want to examine the private parts of people for medical purposes, most of them would not agree to be so examined. If you explain to them what exactly you are going to do, 90 per cent. of them will come round, but the remaining 10 per cent. will under no circumstances submit themselves to such examination. They think that it is a dishonour to submit to such an examination. This part of the world is so very backward.

Q. Do you think that if no publicity is given to cases like this they will come to light?

A. Cases like this are talked all over the city, but they do not come to court. The Police do not know, but the people in the neighbourhood know it all right. It leaks out.

Q. If a case like that happens and everybody knows about it already, how is it that its mere bringing to court brings shame on the parties?

A. That is the idea of the people. They think that if the case goes to court they will have a bad name.

Q. If the action is bad and everybody knows about it, I cannot understand what additional shame there is in its going to court?

A. But they do not like to add insult to injury and aggravate matters by going to court.

Q. Will any change in the procedure better matters?

A. Education and nothing else.

Q. In paragraph 18 you say that the Deputy Superintendent of Police should be given the power to investigate. Supposing the hand of the police is altogether eliminated, will it be better in your opinion?

A. My idea is that there should be a higher Police Officer. There is difference between officer and officer. A constable's mode of investigation is absolutely different.

Q. If this power of investigation is taken away altogether from the police and power is given to other parties to complain and prosecute and bring in witnesses, do you think it will be better?

A. No, there should be some force behind it. Supposing I keep my car in the street and some part is stolen, no amount of entreaties on my part will be enough to take the offender to court. There should be some force which will compel the offender to submit.

Q. Do you mean to suggest that nobody else except the police will be able to do the investigation work?

A. Yes, people do not generally like to go to the length of complaining against their neighbours.

Mrs. Nehru: Do you think that if the Deputy Superintendent of Police is authorised to conduct the investigations, the lower police officers will have nothing to do with it?

A. If the Deputy Superintendent himself is asked to conduct the investigation, I do not think the lower officers will have anything to do with it.

Q. But might not the Deputy Superintendent ask the subordinates to make preliminary investigations, etc.?

A. There are exceptions to every rule. In some cases he might ask the subordinate to do so, but in the end he will have to sign the report himself and will have to own the responsibility.

Q. Speaking about early marriage you said that conditions in Bannu are better than in Peshawar. What is your experience of Peshawar?

A. In 1913 I was in Peshawar and in the same year I married a Peshawar wife and since then my visits to Peshawar have been frequent.

Q. We have been given the impression that early marriages generally take place among the Hindus in Peshawar. Is that so?

A. Yes, they are getting better now.

Q. In paragraph 7 you say that there is no religious sanction at all behind these early marriages. May I take it that you are not referring to the Hindu texts but that it is your impression?

A. My impression is that if there are certain slokas in some texts in favour of early marriage I look upon them as interpolations.

Q. Apart from your personal view, do the Hindus in general believe that there is any such religious injunction?

A. No.

Q. Then what do you attribute these early marriages to?

A. It is on account of the abductions that have taken place. It is being passed on to posterity.

Q. Does the same fear of abductions still continue?

A. Want of education and superstition are the chief causes. The superstition is that if a girl is married after she has menstruated, there will be no reward in heaven for the father. That is a false text mis-quoted by the authorities.

Q. Therefore ignorant Hindus still believe that there is some religious injunction?

A. The fact is that in most places Hindu religion and Hindu social customs are intermingled so much that it is difficult to distinguish the one from the other.

Q. What age for marriage would you suggest?

A. I would put down the general minimum as 16.

Q. Do you not think that it is too great a jump if the conditions are as you suggest?

A. Of course, it is a jump from the point of view of the ignorant people. But now there is a talk in the papers and there is the talk of the Age of Consent Committee going round. The conditions were different when the ages of 12 and 13 were passed as the age of consent. People did not know anything about the subject and there was no such committee.

Q. If you fix the age of marriage at 16 would you still require an age of consent?

A. No.

Q. Supposing the Assembly were to fix the age of marriage as 14, would you then support the age of consent within marital rights?

A. Then you might leave it to the people themselves.

Q. Is it not a counsel of despair?

A. It should be when the representative body thinks that 14 is sufficient.

Q. There may be practical difficulties and reform and progress should be on cautious lines. Supposing the age of marriage is fixed at 14, would you then suggest that the age of consent should be fixed at 16 to cover cases between 14 and 16?

A. The fixing of the age of consent at 16 will cover these cases.

Q. You say that consummation before puberty is fairly common in intra-marital cases. Is there any such ceremony as Muklawa in these parts?

A. No, not in these parts; it is common in the Punjab. I remember in my own marriage—it is now 15 to 16 years ago—there used to be such a ceremony. But now-a-days they are only nominally observed. The first visit of the girl was during the marriage and then the second visit was during the Muklawa. Then there was the third visit when only the husband and wife met each other actually. It was called the Tiraaja. This last ceremony usually took place one or two years after Muklawa. Immediately after the marriage the girl goes to the house of the husband. The performance of the Muklawa depends upon the mutual settlement of the mothers of the bride and bridegroom about the dowry, etc. Usually these are arranged in our household by women. It should be so as a matter of fact.

Q. Then do you mean to suggest that cohabitation before puberty is the result of the girl going to the house of the husband immediately after marriage for the first time?

A. Yes. Formerly on the first visit and at the time of the Muklawa ceremony the girl and the husband were not allowed to meet each other. Muklawa is really *Mukh Dikhlaawa* which means seeing the face, and that was the time when the bride and the bridegroom were allowed to see each other's face. It was only at the Tiraaja ceremony that they met each other. But the last two ceremonies are not now in vogue.

Mr. Kadri: You say that the majority are not aware of the legislation about the present age of consent, but still you tell us that there is dissatisfaction. How do you explain the dissatisfaction?

A. There is dissatisfaction among those who know the law.

Q. What is the proportion of the population where there is dissatisfaction?

A. Change everybody wants. Every day people come across the deaths of child mothers, and irrespective of the fact that they do not know the law, there is a feeling in society that there should be some change.

Q. Supposing by some chance this legislation about marriage fails, then do you think that instead of that we should have a legislation fixing a higher age of consent?

A. Yes.

Q. So far as orthodox opinion is concerned, we have been told that both Hindus and Muhammadans will prefer the age of consent legislation to legislation fixing the age of marriage. What is your opinion?

A. I would like to have both.

Q. Is there any force in the view that public opinion is against both these kinds of legislation?

A. Public opinion as it is understood is not created by holding meetings, delivering lectures and converting some people to your opinion. Real public opinion is created by a small number of people, say 7 or 8, reading papers, discussing the subject and coming to an agreement. Such public opinion is not against legislation.

Q. There is a provision in the penal law about connection with strangers and in the present law that age is 14. Would you not raise it in the case of ultra-marital relations?

A. Yes, I have suggested 16 for towns and 18 for villages.

Q. Till 18 according to civil law a girl is a minor. Bearing this in view would you still have 16 in towns or would you have it 18 in both cases?

A. Times have changed and at the age of 16 a girl knows more about things than grown up people did some years back. I think, therefore, the age may be 16 in the case of towns.

Q. You have spoken something about kidnapping cases. You say that the practice originated with certain social reformers of the Moghal period. What is the foundation for that?

A. I remember to have read that in London in a pamphlet.

Q. Have you got historical grounds?

A. Yes.

Q. Could you give us the name of the history?

A. No.

Q. What is your reason for saying that the investigation should not be conducted by an officer below the rank of a Deputy Superintendent?

A. Because he will do it in a more efficient manner. First of all, he will go and explain the circumstances to the parties and if you send a junior man he will just go along in his own way.

Q. But if I tell you that I have seen several enquiries conducted and that no complaint has been made against the mode of enquiry, will you then be satisfied?

A. I will like a Deputy Superintendent to conduct the enquiry in these parts. It is a backward part.

Mr. Kanhaiya Lal: You are in favour of the marriage age being fixed at 16. What is the age of consent you would fix for marital cases?

A. When the age for marriage is fixed what is the use of an age of consent?

Q. The use is this. Suppose the mother or the father of a girl is not keeping good health. They might like to settle the daughter in life in their own lifetime. The law may be in those circumstances broken and the marriage may be celebrated and consummation may follow the very next day unless there is a law fixing the age of consent.

A. Then I would fix it at 16.

Q. Suppose you have no marriage legislation, would you still fix the age of consent for marital cases at 16?

A. Yes.

Q. What is the punishment you propose to give for an infringement of the law in marital cases?

A. I agree with what is proposed.

Q. Would you be content with fine or simple imprisonment up to 2 years?

A. Fine would be a fine on the parents of the husband. It is no use having a fine. I will eliminate fine from the proposed punishment.

Q. Suppose a boy of 16 years commits a crime on a girl of 18 years. Would you still require that the boy should be sent to jail for an offence which is more or less of a technical character?

A. Yes, I would.

Q. But you realise that if the boy is sent to jail, he may not like to see the face of his wife when he returns and there will be very great animosity.

A. Not in these parts.

Q. By our insisting on sending the boy to jail very serious consequences may ensue to the girl.

A. Not necessarily. The boy will take back the wife, but he may afterwards murder her.

Q. That is what I say. Very serious consequences may ensue.

A. But a boy aged 16 will be sent to a technical institution. He will be more reformed when he comes back. Those who are under 15 go to Delhi and those who are over 16 and under 22 go to the Borstal institution at Lahore.

Q. Suppose there is no reformatory of that character, in that case would you still insist on imprisonment?

A. Yes, because I want to punish the boy and I do not want to punish the father.

Q. I will give another instance. Suppose a boy above 22 commits a crime on a girl of 15. The boy is sent to jail. Would the boy when he returns take back the girl who has been the cause of his ruin?

A. In the course of time the husband will realise that it was a mistake. Good many people do realise their mistakes.

Q. Don't you think in such cases there would be an estrangement and the husband may go back and marry another girl, rather than take back that wife?

A. He may marry another wife for other reasons but not for this reason.

Q. You have said that the law is not known. Is the law broken?

A. People do as they like, unmindful as to whether the law exists or not.

Q. But as a matter of fact is the law being infringed?

A. Yes, by those who know it.

Q. You have told us of cases of as far back as 1912. This amendment of the law has only been made in 1925. Do you know of any instances of the infringement of the law since 1925?

A. No.

Q. Then it is quite possible that the law might be observed.

A. Everything is possible.

Q. You further state that you would make the offence cognizable by the police. Would the people like the idea of the police interfering in domestic affairs of that character?

A. People do not like many other things.

Q. Would you then enforce this measure on the people?

A. Yes.

Q. Would it not discourage people from bringing cases into light for fear of police interference?

A. I think it will encourage. If they are investigated properly and gently, it will encourage. Why should it discourage?

Q. Suppose if the police receives an anonymous petition saying in the house of so and so a certain girl of a certain age has gone to her husband and is living with him, would you like the police to take cognizance of the case on such an irresponsible report?

A. Anonymous letters are not attended to.

Q. But it will be open to the police officer, if he receives information that in a certain village a rape case has occurred, to take action, and to make enquiries.

A. Provided the petition is signed by somebody.

Q. Don't you think the action of the police will be resented by the people?

A. If the police acts on a wrong report and goes to a man's house, tries to investigate the case and finds nothing, surely the man will be upset.

Q. Would you recommend then that action should be taken by the police only on the report of some responsible person?

A. Yes.

Q. Who should that responsible person be?

A. Some Lambardar or resident of the locality or a member of the Municipal Committee or of the District Board.

Q. What do you mean by a responsible person?

A. A man who realises his responsibility and does not do anything for the sake of fun.

Q. Then to that extent you would make the case non-cognizable?

A. Yes.

Q. Would you allow the parents or relations of the girl or the husband to make the complaint? Would you call them responsible persons?

A. Yes.

Q. Would you allow any social reform organisation or religious organisation like the Arya Samaj, the Hindu Sabha or the Sanatan Dharma Sabha or a Women's Association to make a complaint of that character?

A. Yes.

Q. Without the report from any such person or organization will you not allow the police to take action?

A. No.

Q. Would you, as a medical man, report any such cases?

A. So far as I know, professional etiquette does not allow us to make a complaint. If the case is sent to me by the police, then of course I will have to make the report.

Q. Suppose there is a legal provision requiring medical men coming across a case of infringement of the law of the age of consent to make a report, would that be acceptable?

A. Personally I have no objection. If any case comes to me I will report to the police. It is well-known that watches and doctors seldom agree. I have given my personal view.

Q. Would you suggest any measures for making the law effective?

A. That measure is only education.

Q. Education would not bring cases to light, education would probably stop the crime.

A. Then it is only the force of law.

Q. Would you like to have vigilance societies in rural and urban areas?

A. Yes.

Q. Would you like to have these vigilance societies of a local or a communal character?

A. Those of a communal character would be better.

Q. Would you fix the same age for marital and extra-marital cases?

A. Yes.

Q. How is the system of registration of births working in this province?

A. It is not very satisfactory.

Q. What are the defects?

A. People do not inform the registrar of all the births.

Q. Is there no penalty provided by the rules for omission to give information?

A. There is a penalty for giving the information late. If the case does not come to the notice of the municipality or the police then nothing can be done. Omissions are known either when there is an epidemic of small-pox or when the baby is six months' old.

Q. Would you make any suggestion for making it more effective?

A. Yes, by making the people who carry the information to be more prompt.

Q. I mean, would you make it obligatory on the Lambardar or Patwari of the village, for instance, to report the birth of a child in addition to the person in whose house the child is born?

A. Even now the Lambardar sends the report.

Q. Is there no obligation placed on the head of the family?

A. In villages the practice is like this. As soon as the Lambardar comes to know that a child has been born he asks the chowkidar to go and report in the police station. No obligation is placed on the head of the family.

Q. And in the cities?

A. In the cities also there is no obligation.

Q. On whom is the obligation placed then?

A. Usually the father of the new born goes and reports the fact. If it is not reported, it is not until the vaccinator goes and reports that on the birth register there is no record of such and such a child, that the fact is known.

Q. Supposing we make a law requiring every head of the family to make a report, would it improve the existing practice?

A. Yes.

Q. Would you require a supplementary report should be made after the child is named within a certain period giving the name of the child?

A. Why not make the report when the name is given? It is the practice among Hindus to give the name within three days of birth.

Q. Are you willing that the report of birth be postponed till the name is given, or will you extend the period to 10 days to enable all classes to give the name to the new born?

A. Among orthodox people they ask the Pundit for an auspicious day and on that day the *Nam Karan Sanskar* takes place. I am quite prepared to extend the period to 10 days.

Q. Probably you realise that the greater the delay the greater the chance of the giving of information being neglected in such cases.

A. When it is binding on the parents how can that be? Then it can be found out at the time of vaccination.

Q. Are the vaccination registers preserved?

A. For about 2 years.

Q. Is the date of birth given there?

A. The vaccinator takes the names from the birth register before going to a particular locality, of those who have reported the birth, say, within the last 6 months.

Q. Do you think the vaccination register will also be helpful in retermining the ages of girls?

A. Yes.

Q. Would you like a system of registration of marriages?

A. Yes, that will be a good idea.

Q. Would the people like the idea of being required to report all marriages celebrated in the locality?

A. Not immediately, after some time.

Q. Would you make it obligatory on the parents of the bride and the bridegroom to make the report?

A. Yes.

Q. Would you place the obligation on the priest also?

A. One report is quite enough.

Q. Who should be the authority to register these marriages? the Tehsildar, the Sub-Inspector or the Deputy Commissioner?

A. Just as it is in other countries.

Q. Among the Christians the marriages are registered by the clergyman and among the Parsees by the Deputy Commissioner. What would you recommend in the case of Hindus and Muhammadans?

A. Deputy Commissioner.

Written Statement, dated the 12th August 1928, of Mr. K. INAYAT ULLAH KHAN, M.A., I.E.S., Government High School, Peshawar.

1. If there is any dissatisfaction with the state of the law among the more intelligent people it arises chiefly owing to—

- (a) the part that the future Indian girl is likely to play in the society owing to advancement in social ideas and education,
- (b) the fear that the advancement may become too rapid and break those bonds of commonsense morality which preserve a woman's chastity in ignorance,
- (c) the likelihood that religion and social ban are henceforth to play a minor part in the social activity of the Indian girl,
- (d) the fear that the planting of Western ideas in an Eastern Country of such vast dimensions may prove highly detrimental to the society as a whole.

2. The above are sufficient reason to some minds for making an advance on the present law, but I fear that the advance in order to prove effective shall have to be on somewhat different lines from what it has hitherto taken place. I believe it is not sufficient for the purpose of prevention of an undesirable state of things merely to increase the age of consent and so forth, or again to consider rape as the only heinous offence which a man can commit against a woman. As a matter of fact very few people, if at all intelligent, resort to this violent measure, knowing full well its consequences. A vast number of women in India are ruined in the ordinary way, so frequent in Europe, of veritable seduction. Again a fairly large number of crimes against womanhood is perpetrated in secluded homes by men who are in intimate connection with girls and such crimes are fairly well out of the control of the law. As the future Indian girl is likely to have a wider circle of men to charm than heretofore, it is feared that seduction both below and above the age of consent is bound to increase greatly with the advance of the times. The greatest difficulty which would render any law ineffective in this respect is the character of the Indian girl itself. She is naturally more raw and infinitely more shy than her European sister and considers it her better nature to protect rather than to betray a man who has reviled her. This "kindness" on the part of the average woman is written so large upon her character that even England, with all the advancement she has made in the direction of emancipation of womankind suffers extraordinarily more from this misery than other sister countries like France and Germany where this character of woman has been gradually lost. Woman in England are ruined at a comparatively early age in large numbers by both seduction and rape in utter ignorance of the parents concerned, because the English girl has still a portion of the shyness of her Indian sister left in her. She is apt to caress than to betray her first unnatural lover and although she realises her ruin in the end, it is only after the criminal has gone well beyond the grip of the law that her repentance takes a miserable form.

To my mind the most injurious part of the social intercourse between man and woman really begins when a man with a vicious mind first makes an experiment of his intimate talk and "love" on a girl whether below or above the age of consent. If the girl, at this psychological moment, has submitted to the advances of the man, the future law has suffered a sure defect. I therefore think that the law should step in here at the beginning rather than at the end. If any obstacle can be put in the way of the onward

march of crime it is at that right moment. The kinder feelings of the girl are excited the least then, even though her baser passion is in full swing. I feel therefore that an obstruction put at this stage in words of the law will serve as a constant Policeman and deterrent and will help to purge the society from those professional lovers who have so mercilessly destroyed the happiness of womankind. The law will also be a much dreaded law, as the whole society including the girl itself will serve as protectors.

I am no legal man but the words of a Section or Sub-Section in the Indian Penal Code should run somewhat as follows:

" Whosoever begins to show sexual intimacy with a woman within or without her relations in such a way as is likely to provoke comment in the society with which he or she is immediately connected or make private advances on a woman within the circle of her marriageable relations such as are likely to excite the anger of the woman's immediate relations if disclosed, will be liable to imprisonment which may extend up to one month or fine or both at the report of the woman concerned or her parents or a trustworthy reporter or if that intimacy has taken place with a girl below the age of 14 the punishment may extend to imprisonment for 3 months or fine or both."

I only wish that taking such a step were within the purview of your Committee.

3. Seduction is frequent, and rape rare, but seduction frequently takes the form of undiscovered intimacy extending even over long periods. Seduction with translation of position also sometimes occurs. Seduction for immoral purposes is not a rare phenomenon. The amendment of law has only done what a law could do. The raising of the age to 14 has played its unperceivable part, but yet a part that cannot be ignored.

4. Yes, the amendment of 1925 has certainly been effective among the Hindus by postponing the consummation of marriage, also by stimulating the Hindu opinion. The Muslims are not ordinarily concerned with this amendment as they invariably marry their girls late.

5. The usual age is 13, even in some cases twelve. I have heard of richer Muslim families where the age of puberty has been so low as eleven. Muslim girls in well-to-do families often attain puberty earlier than Hindu girls of the same position, but in the former people there is less chance of immorality spreading owing to more stringent rules of seclusion.

6. Cohabitation before puberty almost unknown among Muslims.

Cohabitation soon after puberty both legal or illegal sometimes heard in both communities, but only practised when there is a legal marriage. Such cases however frequently give abortive results. I have known of Hindus who have had no child or seven years after the couple had been married at 16 and 12 years.

7. I believe the practice among the Hindus of early consummation of marriage before or at puberty more as a superstition confirmed by foolish custom than as a strict religious injunction. The Pundits had much to gain by this injunction and they perhaps slowly introduced it without any real warrant. The erotic religious leaders of common men in the street had also much to favour this custom. I have never seen or heard of a real warrant existing to this effect in standard religious books of the Hindus. It is certain that no penalty exists for the breach of this bad "law".

8. I know nothing about these ceremonies.

9. I believe the attainment of puberty the first indication of nature to let a girl know that she requires a man as her life associate. This first knowledge begins to create in her a feeling of response but it matures only gradually. The selection of such a man therefore is her natural business and this naturally requires time. The space of 5 years may not be considered too much for such an important undertaking in some cases, on the other hand

if a girl is lucky enough to find her husband in 2 years she should not be barred. The selection of an associate requires time, as well as maturity of judgment in the eyes of Nature, and this cannot come with the first indication of attainment of puberty. Even the cow refuses to cohabit at least a year after she has grown fully. I would put "reasonable age" of marriage at 18 and "legal age" at 15 for Indian girls if at all possible.

10. Intelligent consent only comes through knowledge and knowledge only through environment. In the present state of Indian society, it would be criminal to say that even an average girl of 18 really knows what she is doing in this line, unless she is specially warned by her parents. With the advance of intercourse between men and women the age of intelligent consent may come down to 18 or less but it would be difficult to fix any other stage at the present moment even for legal purposes.

11. The physical injury resulting from cohabitation at an early age is uncertain. In fact Nature itself protects the female individual after it has given her the first indication of puberty. The evil of early cohabitation is to my mind so much "natural" or "physical" as social. I have already indicated in answer (6) the injurious effect that early cohabitation may produce through reckless waste of seminal energy in the beginning and want of sufficient response in the female afterwards. That the woman loses her beauty and charm by this practice is well known. That the male organs are also injured considerably is a medical theory. Yet the case depends so much on individual circumstances that nothing definite can be said. I have known much moral benefit result in the early married man through early cohabitation. Many have been saved from unnatural practices and lived a solid life through early legal marriage at the age of 18 or even 16.

12. Maternal mortality has other causes also than early maternity. Infantile mortality has also many causes besides early marriage. It is certain, however, that early maternity plays a considerable part in these mortalities—may not be a very important parts. Intellectual progress of the couple suffers only in an indirect way not directly through moderate cohabitation. I have not known physical health suffer in ordinary circumstances.

13. There is more development of public opinion in the direction of "more light and more air to women" than in any other direction. The "age of consent" has been little talked except among the advanced Hindus. More Hindu have suffered recently from the advance made in the direction of emancipation of women especially in our schools and colleges and therefore the general cry of protection is more heard amongst them.

14. Women favour early consummation, but men favour late choice as the proper choice does not usually come early.

15. I have not followed these offences closely enough to know the details.

16. In spite of all that I have said in (10) I am in favour of raising the age of consent to 14 years in the case of illegal advances. With married couple. I would put it as low as 13 as already prescribed. The margin of error would be reduced in this case.

17. Extra marital and marital offences must be separated from each other. The existing punishment for extra marital rape is sufficient, but for a marital rape under 12 years somewhat higher punishment (8 years) would be more suitable. Elicit married intercourse with wife below 14 should carry lesser punishment (one year).

Over and above this I have already suggested in (2) above—

For extra marital advances above the age of consent.—Imprisonment for one month or fine or both.

For extra marital advances below the age of consent, i.e., 14 years.—Imprisonment for three months or fine or both.

18. Penetration with loss or virginity should, to my mind, be the only measure for extreme punishment of 10 years or translation for life. Beyond

this I would not protect the offender. Within the marital state the punishment for rape should be determined by the physical injury done to the victim.

19. Mere circumstantial evidence that two persons were found in the same room should count as nothing, unless physical injuries and previous character of the woman involved conclusively prove that the offence was committed.

20. Penal legislation would be more effective at the present stage. Ten years later mere legislation. The public are at present in favour of penal legislation.

21. Penal law in mild form *plus* progress of social reform both will bring about the desired results. England did not reach its present position by mere pious reforms.

Oral Evidence of Mr. K. INAYAT ULLAH KHAN, M.A., I.E.S., Government High School, Peshawar.

(Peshawar, 24th September 1928.)

Chairman: Do you know of any cases of marriages below 13 either among Hindus or Mohammedans being consummated and having resulted in any injury to the health or body of the mother or the progeny?

A. I have sufficiently explained in paragraph 11 what my particular opinion is. I do not know any particular case in which injury has resulted to girls married before 13. Even if there were such cases they would not come to public notice.

Q. Have you noticed any cases of girl mothers suffering due to ill health?

A. I have not discerned any noticeable injury. It is just possible girls may be suffering from other diseases but they were not due to early marriages. One cannot find out the whole history of a case. In the particular cases which I know I do not think any injury resulted worth mentioning.

Q. Among Mohammedans generally what do you think is the age for marriage?

A. It is distinctly more than among the Hindus although now the age is increasing and it has already enormously increased during the past 10 years.

Q. What would you put it at?

A. I think it is between 18 and 20. I think very few educated families marry below 18.

Q. Is that the general trend now?

A. Yes.

Q. What would you put the proportion of educated people among whom the marriage age has increased?

A. Exactly the same proportion which there is between the educated and uneducated. Educated people means advanced people and those who come into contact with them.

Q. Do you think there is a large proportion of that?

A. It is a very small proportion. Among the educated class there is another class coming in contact with that class who are tinged or rather affected with the views of the educated class. Educated class of people are increasing.

Q. Would you say the same thing of Hindus?

A. Most certainly. Hindus are not backward; they are the most forward people and they accept any view that is reasonable. I think they are coming to favour that the marriages should be late.

Q. In answer to Question 9 you have said "I would put reasonable age of marriage at 18 and legal age at 15 for Indian girls if at all possible". What do you mean by legal age?

A. I mean the Age of Consent. I have suggested only 15 in case it is not possible to agree to 16.

Q. What do you mean by reasonable age?

A. I mean that parents should marry their girls at 18 but if any law is to be made the age should be reduced to 15.

Q. In other words 18 is a moral recommendation and 15 what you would propose in the present circumstances?

A. Yes.

Q. Which of the two alternatives would you recommend, i.e., fixing the minimum age of marriage or the Age of Consent or both?

A. I am of opinion that penal legislation fixing the higher age of consent would be more useful and more effective than the age of marriage because there will be difficulties if a marriage legislations is made. People will resent it.

Q. Even the Mohammadans will resent it?

A. Yes. In the Mohamedan press there has been a terrible discussion whether the Bill should be agreed to or not.

Q. Do you think that the law of 1925 raising the age from 12 to 13 has protected girls actually married against cohabitation by their husbands?

A. The answer can only be that the law has done what a law could do. I think most of the legislation remains a dead letter but a certain amount of fear has been produced among the people. For instance there is a law against smoking in the Punjab. I do not think it has deterred boys from smoking but at the same time it has created some fear.

Q. In that fraction of good that a law could do, it has been effective?

A. Yes.

Q. Do you know the fact that a large number of consummation of marriages below 13 are not brought to light although they do occur?

A. Yes. They are not brought to light because they are consummated in perfect ignorance of all other people except the parents concerned. The law cannot protect them.

Q. It has been suggested to us that marriage being an overt public act, if you prevent marriages altogether you will put the youngmen in the temptation to commit an offence. What do you think?

A. I am against such a law. I am against legislation fixing the age of marriage.

Q. Supposing there was such a law, do you think that would be more effective than the Age of Consent?

A. I will not contradict myself. I will say no.

Q. If there is marriage legislation, then marriages below the prescribed age cannot take place and if they do the parties will be punished. Don't you think it will be more effective?

A. But who will be the legislating authority. I do not think the Assembly has power to make a law against somebody's religion. Nobody will accept it and it will be broken.

Q. How will it be broken when there is a law?

A. There will be a great hue and cry. Legislation can only be made on things which are universally accepted. Although it may be a religious dogma of the Hindus it will certainly be considered as unnecessary obstruction in the way of Mohammedans. Mussalmans are now at perfect liberty to marry at the age of 13 or 14 whenever they like.

Q. Even at 9?

A. As a matter of fact it is a thing which one should not be proud of and there is discussion in the press that Prophet married a girl at 9.

Q. Do I understand you to say that because the present liberty to marry at any age will be restricted that the marriage legislation will be opposed?

A. It is not due to the present liberty to marry at any age but it is due to religious injunction or custom. It is not a custom practised by somebody through ignorance but it is a custom dating from time immemorial among people who were more civilised than the Europeans. How can we possibly let the Europeans interfere in things which have been practised for the last so many centuries.

Q. Do you think any restriction on that would be resented?

A. Yes, I think so.

Q. Supposing such legislation were possible do you think it will cover all possible cases?

A. Supposing there is a father who is sick of consumption and has got a girl of 3 or 4 and wants to marry her. Would you ask him to wait until the law allows him to do so or would you let the girl be married and let the father die satisfied. This is one example out of thousands.

Q. You are referring to some special cases?

A. I am referring to every day happenings. In Europe a girl of 13 or 14 can stand on her own legs and earn her livelihood but among Indian families a father—a dying father—or mother for whom marriage of his daughter is one of the most important things cannot have peace of mind. Supposing he is on the death bed or stricken by poverty or some other accident happens, the legislation would be an immense obstacle in his future programme. Therefore if you restrict him and lay down any hard and fast rule for marriages, his difficulties and anxieties will be immensely increased. I am personally opposed to it because I think father is the best guardian of his daughter and he always likes the best for her. Therefore he should be left alone to solve his own private affairs.

Q. You will not fetter the discretion of the father to marry the girl to anybody he likes.

A. No.

Q. May I take it that the trend of your evidence is that connection with any girl whether with her consent or not should be prevented?

A. Yes, to prevent social intercourse of the kind which has become scandalous in Europe.

Q. Do you realise the fact that it is not within our purview?

A. Yes. I would not put any obstacle in the way of the parents. Our parents are the best parents in the world. I have not come across a case in which a father has thrown away a girl to robbers or butchers. They try their best to find out the best husbands for their daughters.

Mr. Kanhaiya Lal: But a few parents sell their girls to old people taking money regardless of the girl's interest.

A. (But how many of them there are?) Only a few. They might constitute only 1/50th per cent. of the total population or even less. (Do you want the act to apply to all or only to a few?)

Chairman: Do you think that by raising the age against husbands from 13 to 15 as you suggest more cases will come to light and that girls below 15 will be protected against cohabitation by the husband?

A. I think the older a girl becomes after 13 there is more temptation to cohabit. I cannot therefore prophesy that there will be any improvement. Things might possibly remain where they were, or perhaps they might get worse. There is knowledge on the part of the girl also of the other side. That knowledge will not truly bring about better results.

Q. In para. 5 you say that Muslim girls in well-to-do families often attain puberty earlier than Hindu girls of the same position, but in the former people there is less chance of immorality spreading owing to more stringent rules regarding seclusion. Do you believe that if there is an increase in the age of marriage preventing marriages till 14—Sarda's Bill puts it at 14—do you think that the chances of immorality amongst girls, either Muslim or Hindu would be greater than what it is now?

A. That depends entirely on environments. Personally I would be afraid of sending a girl to a school or college because I think there is some risk. I doubt very much the wisdom of legislation on the subject at this stage.

Q. Considering the modern trend of opinion towards increasing the age of marriage to 18 and more, do you think there is any immorality amongst girls at present?

A. It depends on individual circumstances. It depends upon the individual health of the girls also. That is why I say that the protection of the father acts like a safety valve. As soon as he recognises that the daughter has become marriageable he at once gets her married.

Q. They are exceptional cases that you are talking of. But how is it that the general trend is towards raising the marriage age? Have you found any risk in the increase in the age of marriage at present?

A. There is no obstruction anywhere. In particular cases any girl can be married at any age.

Q. But what about the generality of cases? Do you think that there is any risk at present as the age is increasing?

A. No, because there is liberty of marriage. But once you put restrictions, you will increase the risk because the girl is not going to be married till a certain age and the father cannot get her married, there is a likelihood of more risk.

Q. But the initial age that is suggested as the minimum age for marriage for girls is only 14 under Sarda's Bill.

A. I was under the impression that Mr. Sarda's Bill was fixing it at 16.

Q. As you say that the usual age at which marriages take place is 18, there is hardly a year between this and the minimum age fixed for marriage.

A. But I do not oppose it on account of age but legislation, in my opinion, would not be suitable.

Q. Supposing the legislation fixing the age at 14 passes, do you think it is the age to which there are risks attached?

A. No.

Q. Do you think that the early marriage of girls below 14 leads to their education not being completed?

A. Yes, that is one of the social disabilities.

Q. Do you think also that they are less fit for becoming mothers?

A. Yes, all the social evils come through early marriage. If the mother is not fully developed in all these things she will bring up a bad child.

Q. What are your remedies for that?

A. I am very hopeful about the education that the public is being given on this point and I think that in the last 10 years there has been a going upwards and not downwards. I do not advocate legislation at this moment simply because we are backward. 20 years hence I would be first person to advocate legislation. When ideas become broadened legislation becomes necessary.

Q. Then legislation may not be necessary at all.

A. Legislation fixing the Age of Consent is to my mind inopportune at this moment.

Q. Do you rely on the growth of public opinion?

A. Absolutely. We must advance with the times. Legislation comes only when the people are there to accept it.

Q. After 20 years you expect such results and it may be that then there would be no need for any legislation.

A. At this moment legislation fixing an age of marriage will bring about a hue and cry. The ideas of the people are not sufficiently broad.

Q. Are there any Quaranic injunctions against fixing an age for marriage?

A. Quranic injunction is to the effect that a girl must be married after puberty, not before that.

Q. Is the Quranic injunction to the effect that the girls should marry only after puberty?

A. Yes, not before that. There is no Quranic injunction permitting marriage before puberty. It cannot possibly be.

Q. In para. 13 you say that more Hindus have suffered recently from the advance made in the direction of emancipation of women especially in our schools and colleges and therefore the general cry of protection is more heard amongst them. What do you mean by that?

A. I am referring to the undesirable things that have occurred in our schools and colleges. It is on account of that some Hindus have suffered more than Muslims, because Muslims very rarely send their girls to schools. In the Queen Mary's College at Lahore there are not more than half a dozen Muslim girls. That is what I am referring to.

Q. Do you mean to say that there is any irregularity in the conduct of the girls?

A. Yes, and also a bad organisation with regard to the remaining of the girls aloof from men. You say that the suggestions I have made in the first two paras. of my statement are not within the purview of the Committee. The Muslim law prevents Zinah, whether with or without the consent of the girl, I think there should be a law on the lines I have suggested. You are now attempting to obstruct crime. I say, why do you legislate after a crime has been committed, why not before. There should not be any unnatural or illegal intercourse between a man and a woman until we know that both the parties are loved and beloved.

Q. How can there be any remedy to prevent that?

A. A mild legislation in the Penal Code on the lines I have suggested would remedy the evil. This will prevent people who make love a profession.

Q. But that is not within the purview of the Committee.

A. But the Age of Consent will come in the Penal Code. May I not say that you can put another article in the Penal Code on the lines I have indicated?

Q. That is to say to make all mischievous connections illegal. Is it not extremely difficult?

A. It would be the one which parents would resent.

Q. But after 18 Muslim parents have no control over a girl.

A. Under the present practice even a girl of 20 if she is living in the house of the parents has to marry with the consent of the father.

Q. But what about the practice?

A. If the girl marries without the consent of the parents I would say that she is supposed not to be the daughter of her father.

Q. What is it then that you want to make penal?

A. I want to have legislation of the kind proposed by me. If there had been such legislation in England the girls there would not have come to this.

Q. Do you mean that there should be no courting?

A. Yes, I mean a man first going to one girl, and then to a second and so on and flirting. This sort of thing is resented by all people in India. I therefore suggest penalising courtships, flirtations and things like that.

Q. But that is beyond the purview of the Committee.

Mrs. Brij Lal Nehru: Do you think that early marriage acts against the moral, intellectual and physical development of the girls?

A. Yes, to a certain extent.

Q. Do you also think that early marriages are performed by the parents out of love for the child?

A. Yes.

Q. You say that parents do everything for the child out of love and therefore they should not be interfered with. But all the same marriages are performed by the parents at an early age and it is according to you harmful to the girls concerned. Then how is it that the devoted parents perform an act which is harmful to the child?

A. Loving in the sense that they see with their own brains. I cannot reconcile myself to that, but a father thinks from his own brain and judges for himself what is good and what is bad for the child.

Q. Do you not think sometimes even out of love but because of ignorance the parents happen to do things which are harmful to the child?

A. Yes.

Q. Do you not think then that this ought to be checked?

A. Yes, but it should not be made a legal bar. I do not see sufficient reason for legislation fixing the age of marriage.

Q. Do you agree to all social legislation on other things?

A. Yes, but it depends upon the nature of the legislation.

Q. Are you aware that in Afghanistan, Turkey and Egypt they are making laws which are rapidly eradicating social evils?

A. But the Afghan Monarch is an enlightened despot.

Q. Do you think that they are doing good to the country?

A. Every dictator supposes that he is doing good to the country.

Q. In Egypt the age of girls has been fixed at 16 for marriage. Do you think that it is doing some good?

A. But are we so advanced as Egypt. When we come on a par with Egypt we ought to legislate like Egypt. But we are now far behind Egypt in social matters.

Q. In what way?

A. Public opinion will not be with you.

Q. Then are you personally of opinion that it is good?

A. Yes, but I say that you should not legislate not because of public opinion, but because we are not ready for it.

Q. What is your personal conviction?

A. My personal convictions are entirely opposed to what I have written. For aught I know they might be revolutionary. But I have given you what practical politics are.

Q. In this particular instance, is your personal conviction for or against it?

A. I decline to answer the question, because my personal convictions may be entirely different from what I have written.

Q. You are at liberty to answer or not to answer a question but as you are here to help us I thought you might be kind enough to answer.

A. I am sorry it would be a revolutionary thing. I have tried to impress upon you my views as far as possible, but they may not be based on personal convictions.

Q. Then what are they based upon?

A. What the people will take and what is necessary in the present circumstances.

Q. In your statement in 1 (b) you say the dissatisfaction is due to the fear that the advancement may become too rapid and break those bonds of commonsense morality which preserves a woman's chastity in ignorance. What do you mean by that?

A. I will only say that my personal conviction is that ignorance breeds chastity and knowledge breeds immorality.

Q. Would you then advocate ignorance?

A. I cannot say. The ignorance of the girl in a village breeds chastity in her which we do not find amongst citizens.

Q. What do you mean by knowledge?

A. Knowledge in general.

Q. Will you advocate ignorance on any other grounds?

A. It is a fact in which I entirely believe because it is a fact. Women in villages are far superior in morality to those in towns. It is not right to say that I advocate ignorance, because I say so. I would not say that a woman's chastity is the only thing in the world to look after. There are nobler things.

Mrs. Nehru: In your answer to question No. 8 you have mentioned that rape and seduction cases do take place in this province. Can you tell us at what age do these cases generally take place?

A. It will be after puberty.

Q. Is it between the ages of 18—16 or later?

A. I think seduction between 18 and 16 is very rare. It generally takes place after 16.

Q. And abduction also takes place about that time?

A. Yes.

Q. In the same answer you have said that law has done something to mend matters with regard to rape and seduction cases. Could you tell us whether you have any proofs to that effect?

A. The evidence in my mind is the instance of a certain individual which has come to my notice. Probably propaganda work in connection with the raising of the age might have brought that about. I have one or two particular instances in which certainly it has acted as a deterrent.

Q. In what way?

A. What I mean is that I remember in a certain village in the Punjab there was a case like this. A girl was almost going to be seduced when she was caught by the neighbours. We had a similar case here in Peshawar now about 6 months ago. It is with regard to a certain man. I think he was told that the girl was under age and that Government had recently raised the age and therefore you must not do things like this. The girl was with the man for a couple of days and after that she was released. Otherwise there might have been rape. At any rate there was no seduction after that. He was stopped because of the existence of the law. As I have already said propaganda in this connection might have also done some good.

Q. Then again in your answer to Question No. 4 you have said the amendment of 1925 has certainly been effective among the Hindus by postponing the consummation of marriage. Could you also give some instance where the proposed marriage of somebody was postponed on account of the existence of this law?

A. I am sorry I cannot give any particular instances. I have heard the Hindu society and especially Hindus of a higher circle talking about it and frequently discussing this. It has been discussed in Simla and Lahore society. That has been the subject of discussion in many places. Therefore I think this law must have done some good. Even the newspaper propaganda with regard to this has been quite effective. The Punjab papers and some of the Allahabad papers both English and Vernacular have discussed all these things with entire vigilance and zeal.

Mr. Mudaliyar: I take it you are educated in England.

A. Yes.

Q. You have spent a good length of time in England and in France?

A. I have remained practically everywhere in Europe.

Q. How many years were you in Germany?

A. I cannot say exactly. The last time that I was in Germany is only 3 weeks. I have visited Germany before that several times as a student.

Q. You say that the father is the best man to know when the girl should be married in India. Would you not also say that he is the best man to know when the girl should have consummation of marriage?

A. Yes.

Q. Therefore you would not advocate the fixing of the age of consummation by law.

A. No.

Mr. Kadri: In answer to question No. 1 you say if there is any dissatisfaction it is due to such and such causes. Am I to understand that there is dissatisfaction?

A. I think there are thousands if not millions of minds that are terribly agitated over it. There is dissatisfaction.

Q. What according to Islamic injunctions is the age of puberty?

A. The age of puberty most certainly is the age of menstruation.

Q. Is it between 12 and 17.

A. I don't believe the theologians. I only believe nature.

Q. In the case of marital cases you would fix the age at 15. Would you be satisfied with the same age in the case of extra marital relations or would you raise it higher or as a true Muslim you would fix no age.

A. It was only in answer to question No. 9 that I put the " legal age " at 15. I am still very doubtful if it is either going to be accepted by your Committee or even by the people if it comes to 15. Definitely I propose the Age of Consent to be fixed at 14 for every case. But if it comes to 15 I shall be very happy.

Q. 14 you suggest against husbands. Against strangers would you not put it higher than 14?

A. I don't think. I would propose a difference in punishment.

Q. I think you realise that till 18 a girl is a minor and she cannot enter into a civil contract or dispose of her property. Do you still think that she can dispose of her chastity at that age?

A. Excuse me, you want to make a difference between ultra-marital and intra-marital cases.

Q. The difference is already there.

A. I am sorry, I did not know. Then I would put the age for extra-marital cases at 16.

Mr. Kanhaiya Lal: You have said that punishment should be awarded for immoral advances or approaches. Are you aware that we have already got three provisions under the existing law apart from provisions regarding kidnapping, seduction and prostitution. One provision is that which punishes the outraging of the modesty of a woman either by speech or by act. The second provision is that which punishes attempts at rape and there is the third provision which punishes rape by a husband in certain circumstances and by strangers also under certain limitations. Are these provisions not enough to cover the objects which you have in view?

A. I am sorry to say that these provisions have nothing to do with what I have said. I am only talking of veritable seduction. If a person makes advances on a girl and she makes a response to them and after a certain time she agrees with the man and this goes on with the consent of both parties but with the utter resentment of the parents, I want to prevent those cases. This has nothing to do with the outraging of modesty.

Q. You have suggested that the age for extra-marital cases might be fixed at 15.

A. One year more than what may be fixed for marital cases.

Q. You have said in answer to one of the questions that a girl is not able to give an intelligent consent to intercourse till she attains the age of 18 and sometimes even later. If the girl is not able to give an intelligent consent

up to that age would it not be desirable to fix the age at 18 irrespective of other considerations.

A. My position is this. I do consider that a girl is not fit to give consent even at the age of 18 when she is secluded in her own home and does not know what is going on in the outside world. The law deals with girls of 12 and 18. So far I have proposed that the age should be increased to 13 and 14 and 15 if possible. I would certainly recommend a higher age if it were within the purview of practical politics.

Q. Do you consider the age of 18 would not be practicable?

A. No.

Q. What age would you recommend for extra-marital cases then?

A. If I were to fix the age for extra-marital cases before fixing the age for marital cases, that would be preposterous.

Q. Then you can tell about both.

A. My personal opinion at this moment is this. The law deals up to this time up to 12 and 13. It should be increased to 13 and 14 or 15. But if the age could be increased to more than that it would be a good thing indeed. It would certainly be catastrophic. It won't be gradual.

Q. If you fix for intra-marital cases what age would you recommend for extra-marital cases?

A. 16.

Q. If the age is fixed at 16 for marital cases would you be prepared to go up to 18, say?

A. For extra-marital cases it should be one year more.

Q. Would you not have a wider difference?

A. No. In the case of marital cases it is no offence whatsoever. With regard to extra-marital cases I would simply say that it depends so much on the advancement that we have made in the ideas of morality. The public in general is not very much advanced. Even now if a girl practises any undesirable means among her own marriageable relations, it is excusable and it is not considered a very high crime.

Q. In view of the fact that we have not much advanced would you still think that the difference should only be of one year?

A. I should think so.

Q. Will you kindly tell us whether the ages recommended, 15 and 16 would be generally acceptable to the Hindu and Mohammedan communities?

A. Yes, if there is a penal legislation. Indians submit to everything that is inevitable.

Q. Can you suggest any way of making this effective?

A. If you give sufficient time it will give you sufficient results. You are very doubtful about your own laws.

Q. You have said that ignorance breeds chastity and knowledge breeds immorality.

A. I only said that ignorant people are more moral than those who are educated in schools, than those who come in contract with civilised life in the cities.

Q. Do you recognise that education helps to develop a sense of moral responsibility both among boys and girls?

A. Education does. But there are different types of education.

Q. Do you advocate education of the proper type?

A. That is an ideal.

Q. Would you not be prepared to say that if education promotes a sense of moral responsibility it would be helpful in lifting the morals of the people?

A. I am sorry, absolutely not. I have seen hundreds of people educated in these schools.

Q. Are you afraid that if education of the type as imparted to our girls is continued there is a danger of their sense of moral responsibility being lowered?

A. Absolutely. It is being lowered. Education of the mind is different from education in the books.

Q. Are you recommending religious education?

A. I am only saying education and not religious education.

Q. May I take it that education on the right lines will help?

A. Education on the right lines is not realisable in India.

Written Statement of AGHA PIR SAYAD MUNIR SHAH, Secretary, Anjuman-i-Jafria, Kohat.

1. Yes, there are dissatisfaction regarding the present law so far as married girls are concerned. The age limit for a married woman should be 12 instead of 13 years. Therefore the words 12 years should be substituted for the words thirteen years in the exception to Section 375, I. P. C. So far as unmarried women are concerned the age of consent should be 14 years as enacted by the present law.

2. The present law relating to unmarried women should be retained because in India girls attain puberty generally between their thirteenth and fourteenth year of age.

In case of married women I recommend the adoption of the limit of 12 years because it is not only quite valid to marry women of this age according to Muhammadan Law but there is still the custom of early marriages in this country.

3. The amendment of the law had no effect of reducing the cases of rape; on the other hand it tended to increase their number. I therefore propose that the old law should be adopted.

4. Only education and social advancement can be effective in protecting the girls.

5. The answer to the last part of the question is given in answer to question 1. As to the third part of the question it may be noted that in well-to-do families girls attain puberty at an earlier age than the girls in poor families.

6. No.

7. No, I do not attribute the practice.

8. No.

9. Yes, to a great extent.

10. Generally at the age of 12 years.

11. No such case has occurred in my experience.

12. No. The high maternal and infantile mortality is generally due to weakness of constitution, want of proper precautions at the time of birth and during pregnancy of the attendance of the illiterate and unqualified nurses.

13. No. The public here is absolutely ignorant of the amendment of this law, because the enactment of any new law or an amendment of an old law is never advertised publicly.

14. Yes.

15. Yes. I would propose strict compulsion on the public to report the birth and names of their children and the imposition of some penalty in case of default, with a view to remove such difficulties.

16. No.

17. Yes. The punishments prescribed by the amendment of 1925 for offences under Sections 376 and 376A advisable.

18. Yes. The offence of illicit married intercourse should be made non-cognizable, bailable and compoundable and summons and not warrant should ordinarily be issued.

19. The amendment proposed in reply to the question No. 18 can be the best solution of this difficulty.

20. Both the schemes would in my opinion be ineffective. The public here is in favour of neither.

21. I would strongly prefer social reform by means of education and social propaganda with a view to secure the object in view.

Oral Evidence of AGHA PIR SAYAD MUNIR SHAH, Secretary, Anjuman-i-Jafria, Kohat.

(Peshawar, 24th September 1928.)

(Vernacular.)

Chairman: May I know whom do you represent?

A. I am Secretary of the Anjuman-i-Jafria, Kohat.

Q. What is its membership?

A. 200.

Q. How many members constitute the Managing Committee?

A. 45.

Q. Are the views expressed in the written statement the views of your Anjuman or are they your own views?

A. I did not consider it necessary to discuss them in the Anjuman; these are my own views.

Q. You say that the present age of consent within marital connections should be reduced from 13 to 12.

A. Yes.

Q. Is it according to the Mahomedan law?

A. Considering all your questions I have given this reply.

Q. Among the Shias marriage can take place even at 9?

A. Yes it can even take place at 6. A father can according to the Mahomedan law marry her at 4 years and that will be binding but in the case of other guardians she can repudiate it when she reaches *balugh*.

Q. After the amendment of 1925 you think crimes have increased?

A. Yes.

Q. Are you prepared in extra marital cases to go beyond 14?

A. Yes, I would suggest 20 or 40 or even up to the whole life of a woman.

Q. What is the reason for the increase in the crimes?

A. The law is not known to the people.

Q. If it is made known to the public do you think it will be effective?

A. Unless you make it known to the general public I cannot say what its effect would be.

Mr. Kadri: In intra-marital cases you would like the age to be reduced to 12?

A. Yes.

Q. Do you think a girl of 12 years is intelligent to give consent with due realisation of consequences?

A. Taking all circumstances into consideration I would say that if she is educated she is more intelligent than an uneducated girl and can give an intelligent consent.

Q. You have said that in India girls attain puberty between 13 and 14. Then *balugh* is not attained at 12.

A. I know of cases where puberty has been attained at 12, it depends on different circumstances.

Q. Would you like an age for marriage to be fixed?

A. No. Suppose you fix an age for marriage and a girl before that age wants to marry herself. According to the Mahomedan law and the custom she cannot stop and if her parents stop her they will be punished and it may lead to the girl's immorality. Therefore I suggest it should not be fixed.

Dr. Beadon: Have you come across a girl mother at 12 or 13?

A. Yes.

Q. Is it not harmful to marry girls at 12 or 13?

A. If she is strong and well developed there is no harm.

Q. Is a girl of 12 fit enough to look after her child?

A. Even a grown up woman is unfit.

Q. How long ago did you see girl mothers at 12?

A. I have got a very large number of followers in the N.-W. F. P. and the Punjab. I have seen girl mothers during the last 12 years.

Q. Have you seen any injury to their life or body?

A. I do not remember.

Mrs. B. Nehru: Do you represent any religious sect?

A. I am the representative of religious and social communities. I can speak with authority on their behalf.

Q. You suggest 12 years as the age of marriage being in accordance with religion?

A. No I have not brought religion here.

Q. Then why do you prefer 12 years?

A. That is due to my experience.

Q. Have you seen any dissatisfaction with the present age of consent of 13?

A. If there is a well developed girl she would like to be married at 12 and would not sustain any injury.

Q. Do you consider the education of girls essential?

A. Not at present.

Q. You say that since the amendment of 1925 the cases of rape have increased. What is the reason?

A. Because the people do not know the law.

Q. Then it has no connection with the amendment. Do you mean to say that it had no effect?

A. Yes.

Q. You have said that people do not know the present law. If the law was made known to the people do you think it would be effective?

A. It can only be by propaganda and education.

Mr. Kanhaiya Lal: You have said that the girls attain the age of puberty between 13 and 14. Is it not desirable therefore that the age of consummation should be something higher than 14?

A. According to the law of nature and according to religious laws a girl is fit to conceive when she begins to menstruate. Why should there be any law therefore preventing cohabitation when the age of puberty is reached? When a girl is physically fit and when she gets her passions there should be no law preventing consummation.

Q. But is a girl generally not fit for maternity till after two or three years of puberty?

A. In the interests of the majority I would like that the age be fixed at 18.

Q. We have been told that one of the causes of a high rate of infant mortality is early consummation of marriage. Is that your opinion also?

A. Doctors are never able to diagnose correctly. There are many other causes responsible for this.

Q. Does early consummation at times result in sterility?

A. I cannot say.

Q. Have you noticed any physical deterioration of the progeny resulting from early consummation?

A. I find we are improving. We are now making demands which we never dreamt of.

Q. To whom would you give the right of complaint in marital cases?

A. It must be to the wife.

Q. Would you give the right to social reform associations?

A. I don't believe in them at all.

Q. Would not there be cases of hardship if the age of consent is fixed at 18 in extra-marital cases where the girl consents and another person falls a prey to temptation?

A. I would make all such offences punishable irrespective of age, because on grounds of public policy no man should yield to such temptation without punishment. He should restrain himself from doing anything immoral.

Oral Evidence of Khan Sahib KAZI MIR AHMAD KHAN, Public Prosecutor and Government Pleader, Peshawar.

(Peshawar, 25th September 1928.)

Chairman: Are you the Vice-President of the Peshawar Municipality?

A. Yes, I am the Junior Vice-President. Rai Bahadur Lala Karim Chand is the Senior Vice-President.

Q. Are you also the Public Prosecutor of the Place?

A. Yes. I am a Vakil and passed my LL.B. at Aligarh.

Q. Are you connected with any Muhammadan institutions or Anjuman?

A. No.

Q. Do you interest yourself in any reform movements generally?

A. No, not in any organised movement.

Q. May we take your opinion as representing the Sunni sect?

A. Yes, I belong to the Sunni sect and that is the majority here.

Q. Would it be a large proportion of the Muslim population?

A. Yes, it must be a big one so far as Peshawar city is concerned.

Q. What is the age of marriage amongst the Sunnis generally here?

A. On the average amongst the Muhammadans it is about 15.

Q. Do you know the marriageable age amongst the Shias?

A. No.

Q. Would it be the same more or less?

A. I do not think that it is low amongst Shias.

Q. What will it be in the villages?

A. Amongst the lower classes it is rather early because there is a system of getting money. In the better classes it is about 14 or 15.

Q. Do you think that the tendency amongst Muhammadans to raise the age of marriage has been increasing?

A. Personally I can say that the age of marriage during the last 10 years has increased. There is a tendency to marry girls at a higher age.

Q. Is it so even amongst the Hindus?

A. I am not sure of it, but my impression is that the Hindus here marry their girls at a later age than those down country. However, if there are cases of early marriages, they are very few.

Q. Would you be able to tell us what is the age of puberty amongst Muhammadans?

A. I would put it as 14.

Q. Are there pre-puberty marriages amongst Muhammadans?

A. No. During the 16 years of my experience I came across only one case of pre-puberty marriage. The girl was about 7. A case was brought to Court against the husband, but eventually it was dropped. It was two years ago and in Peshawar city.

Q. How long have you been Public Prosecutor here?

A. This time from January, and before this for 4 years.

Q. With regard to question 21 we want to know whether you would have legislation fixing the age of consent or the minimum age of marriage, or would you rather leave it to social reform and education and social propaganda?

A. I do not mind a minimum age for marriage being fixed as compared to an age of consent which makes the whole thing rather complicated.

Q. Why?

A. According to the Muhammadans here there are three stages of marriage. The first is the betrothal. After that there is the actual *nikaḥ* ceremony. And then there is a third ceremony which is called the Doli ceremony or the handing over of the girl to her husband. If this last ceremony is once performed, the parents of the girl would consider it a disgrace to make her submit to any medical examination, etc. I would therefore rather have the age of marriage fixed.

Q. What would you put as the age of marriage for girls?

A. My personal view is that it should be 14. But taking the society as it is at present I think that 13 will also conveniently do. However, I won't go below 13.

Q. Mr. Sarda's Bill provides 14 for girls and 18 for boys. Do you approve of them?

A. Yes, I approve of them.

Q. Do you know of any cases below 13 since the Act was last mentioned?

A. Not any since the Act was amended.

Q. Alongside this marriage age, would you also have the raising of the age of consent?

A. Yes, I would have it 16 against stranger and within marital relations it should be 14. But I would take public opinion into consideration and have the latter at 18 or penalise marriage before 13 rather than have an age of consent at all.

Q. Have you found any difficulty about proving the age of girls?

A. As Public Prosecutor I have not had, but as a lawyer I had some trouble about age. Medical opinion is generally taken, but there are cases which are on the border and there is difficulty in such cases.

Q. Do you think that fixing the age of marriage at 14 and the age of consent at 16 would help?

A. As a lay man I am not in a position to give an answer. A doctor would be able to answer it better.

Q. Are you in favour of separating the two offences? In both cases it is called rape.

A. Any such differentiation would be fastidious.

Q. Would you suggest any difference in the procedure of trials beyond what it is now?

A. No, I would retain the present procedure. I would however suggest that in cases within the marital rights non-compoundable should be made compoundable. The punishment should remain the same. If the case goes to Court it is better that we allow the parties to compound rather than ruin the girl for ever.

Q. Do you think there is any difficulty in trying these cases in camera?

A. No, it will obviate difficulties.

Q. Do you think that if these cases are tried in camera more cases will come to Court?

A. But that is not the only reason which stops these cases from coming to Courts.

Q. What is the main reason?

A. The main reason is the general reluctance of the parents of the girl to get the matter out. Even if these cases are tried in camera, one can get copies of the statements, and that might affect the future career of the girl. Generally marriages are within the family circle; and if you disturb them the general economy of the family itself is disturbed. The case creates bad blood between the two branches. That is the main reason why such cases do not come out.

Q. Do you think that there will be agitation amongst Hindus and Muhammadans, if the marriage age is fixed?

A. I am not sure about the Hindus, but as regards Muhammadans I can say that that is the age at which we are having marriages.

Q. If we fix the age of marriage will Muhammadan resent it?

A. My own experience is that they would not. It will be tolerated. So far as I know in the whole district not more than 20 cases will be affected.

Q. Do you know of any cases in which definite injury has resulted from early marriage?

A. No, I have not.

Mrs. Nehru: What is this tendency to raise the age of marriage due to?

A. General education.

Q. Has it nothing to do with the Age of Consent Law?

A. No, I do not think that except lawyers many people know the change in the law.

Q. Has it had any effect in checking crimes?

A. I do not think the age of consent has had any effect at all in that direction, i.e., so far as crime is concerned.

Q. Are there many cases of seduction and rape in this part of the country?

A. No.

Q. Have you come across any in your legal practice?

A. Yes, seduction cases there are many, but they are in extra-marital cases.

Q. Do you think they take place in large numbers?

A. Not very large numbers, but fairly large numbers.

Q. Has the change in the law been known to people?

A. No.

Q. Have you noticed any difference in the number of cases that come before you?

A. Nothing except that we have got a different age to prove. The difference does not affect in any other way.

Chairman: Can you give instances where these seduction cases occur?

A. Yes, but the age of the girls was never so low as 7 or 10. The majority of cases were about 13, 14 or 15. At that time the girls had attained puberty. The cases were more or less technical.

Mrs. Nehru: You said that the age of consent could not be effective because it was difficult to keep the boy and the girl separate. Supposing we penalise the Doli ceremony before a certain age would it be effective?

A. But then you will have to make a separate law for different places.

Q. As far as your province goes, do you think it will work?

A. I do not know what the customs are elsewhere, but in my district it will work.

Q. Some such thing exists nearly everywhere under the name of *goana*, *muklawa*, etc. If that ceremony is penalised, do you think it will work?

A. Yes.

Q. Will people like it?

A. I do not see why they should object. They would not dislike it because they already marry their girls at 14. If *doly* is penalised till 14 it will not be unusual.

Q. If punishment is lowered do you think it will help to bring intra-marital cases to light?

A. No, I do not think so. The punishment is not known, the section itself is not known, and no cases come to court unless there is an injury.

Q. Supposing the law is made well known and steps are taken to make it effective and punishment is lightened, will it facilitate the working of the law?

A. If punishment is lightened, the fear would be light as well. It would not have effect, and the result would be the other way.

Q. Do such cases happen more among respectable families or among the ignorant villagers?

A. Amongst ignorant people.

Q. Will deterrent punishment therefore count more?

A. Yes, ordinary punishment they do not mind and they do not mind going to jail.

Mr. Mudaliyar: You mentioned a case in which a girl of seven years was made to cohabit with her husband. Was it with the approval of the parents?

A. Yes, the father was the real culprit.

Q. In this instance was the *doly* performed?

A. Yes. In the case it was said that the *doly* ceremony was performed and the girl was sent to the husband. That was of course no legal defence.

Q. Is this part of the ceremony universally observed among Muslims?

A. It is absolutely compulsory.

Q. How long after marriage is it performed?

A. After Nikah it may generally be a year.

Q. You have suggested that the offence in marital cases might be made compoundable. Do you think that if it is made compoundable it would be more easy to bring offences to light?

A. Yes, it will help.

Q. Do you think that in gross cases the Magistrate will refuse compounding and the offender will be punished?

A. Yes.

Q. Do you approve of the idea of the punishment being a bare fine?

A. No, it should be fine or imprisonment.

Q. Do you think that there is any religious injunction amongst Muslims as regards the age at which girls should marry?

A. There is religious permission to the effect that a girl can marry after she attains puberty. But there is no injunction to the effect that a girl should or must marry within a particular period.

Q. Would the fixing of the age of marriage in any way infringe the religious texts?

A. No.

Mr. Kadri: Does this *doly* ceremony prevail in this district only or in other districts also?

A. It may be observed in other districts. I have heard of it in other districts, for instance in the Hazara district. I am not sure about other districts.

Mr. Mudaliyar: Is it essential?

A. According to Muhammadan law it is not, but according to customary law it is. This ceremony synchronises with the feeding of the relations and they naturally expect that they will be fed. The *doly* has therefore to be performed.

Q. If you penalise this ceremony below a certain age, is there no chance of the ceremony being discontinued?

A. Yes, there is a likelihood.

Q. In that case will not the law be ineffective?

A. Possibly, but if the handing over of the girl is penalised, it cannot be done.

Chairman: If we penalise marriage ceremony below a certain age is there any chance that the ceremony might disappear?

A. Yes, possibly.

Q. If the handing over of the girl is penalised, it might not be effective since after the marriage and before *doly* ceremony she may be invited now and then in her father-in-law's house on festivals?

A. That would mean that the father-in-law would make an arrangement whereby the law is not infringed.

Mr. Kadri: Now we are told by some witnesses that any restriction on the age of marriage would interfere with their motion of the Mohamedan law. What is your view?

A. Our Prophet married but who knows whether there was consummation at that age.

Q. But you are penalising marriage and some of our witnesses have told us that it would be an interference with the Islamic religion, would it?

A. I have not come across anything in Islam or Mohamedan law which I have studied where the Prophet or God has said that you must marry at a certain age except that attainment of puberty is the test. If the Prophet married at 9 that does not necessarily mean that we should also do it. There were special circumstances in that case in which the girl was offered

and accepted. So we cannot say that that can be taken as a dogma or a procedure which has got the sanction of religion.

Q. Do you not think the Mohammedan community will look upon this legislation with special resentment?

A. My own submission is that so far as the Mohammedans of this Province are concerned they would not mind it.

Q. In regard to ultra marital relations you put down the age at 16. Some of the witnesses have suggested 18. They believe that according to law a girl at 18 is a minor and she cannot enter into a civil contract. What is your opinion?

A. We have to be between the two dangers, one is that the girl may be misled and the other is her being restrained by the parents. I would prefer 16.

Mr. Kanhaiya Lal: You have said that the *doly* ceremony generally takes place a year after the marriage. If you are in favour of marriage legislation fixing the age of marriage at 14, would you be prepared to fix the age of consent at 15 in those circumstances?

A. What I mean by marriage is the actual handing over in marriage in the English sense. The consummation would be postponed till the age of 14. I said these were the preliminary stages. Marriage and *doly* are synonymous from my point of view. After *doly* consummation must follow.

Q. When you recommend marriage legislation preventing marriage below 14, are you not thinking of *nikah*?

A. No. I am thinking of actual handing over of the girl to the boy.

Q. But marriage is *nikah* and not *doly*.

A. *Nikah* means joining the two persons by a regular ceremony and customs has encroached upon the system inasmuch as that custom has divided it into two separate things.

Q. Would you then not penalise *nikah* at all if below the prescribed age?

A. No, I would penalise handing over.

Dr. Beadon: You were saying that marriages do not take place in the English sense. What do you mean?

A. I am thinking of the fact that in our part of the country generally girls are given away; they cannot marry of their own choice. So the *nikah* question comes only when the girl has got her own choice. Therefore I say that the actual handing over of the girl should not be below 14. I do not mind what the preliminary stages may be.

Mr. Kanhaiya Lal: You are probably aware that girl wives go from time to time to the houses of their husbands or mothers-in-law to attend festivals and other ceremonies irrespective of the fact as to whether the *doly* ceremony has been performed or not. Suppose the *nikah* takes place at 9, would not the girl wife from time to time go to the house of her mother-in-law on such occasions?

A. Not in our part of the country.

Q. And among Hindus?

A. I am not aware.

Q. You are then in favour of penalising *doly* and not the *nikah* ceremony.

A. I would penalise the handing over of the girl.

Q. Supposing the girl is handed over in spite of the legal provision, would not the law, which aims at stopping consummation, be defeated in that manner?

A. The offender will be punished.

Q. If the law penalises only the *doly* ceremony there can be only one punishment for its breach: whereas if you punish consummation, then every act of consummation will be punishable.

A. Yes, but consummation is difficult to prove. The handing over is so open that no one can deny it. As regards consummation it will never come to Court except in flagrant cases in which injury results.

Q. But you leave an easy loophole for defeating the law. The offence is completed directly the *doly* ceremony takes place. The punishment cannot be repeated.

A. Someone will have to put the machinery of law into motion before the offence is brought to the notice of the Administration. My point is that consummation will never be brought to the notice of the Court. I understand that it will be a sort of continuity of the offence but I am speaking of it from the practical point of view.

Q. Looking at the matter from the legal standpoint would it not be desirable to fix consummation as the starting point for the prohibition?

A. I cannot divorce the legal point from the practical point of view. If consummation is the standard, you will have to get the girl examined by a doctor to establish that such a thing has happened and this every girl would be reluctant to agree to. From the family point of view the question of consummation would not be very palatable or pleasing. So I want to take away that element of disgrace and say that the handing over of the *doly* only should be punishable.

Q. But the consummation may be carried on after the boy has undergone imprisonment or paid the fine for the breach of the *doly* law.

A. But the point is which is more workable. I agree with you that from the legal point of view there will be only one punishment as against many for consummation.

Q. At the same time the possibility of the *doly* ceremony being dropped has also to be considered?

A. I do not think so. *Doly* ceremony is very important.

Q. Is *doly* ceremony common to the entire population?

A. Personally among Mohammedans no one is exempt from it.

Q. In the Punjab we are told *goana* is not observed and in that case we would necessarily be in search of a law that would apply with a certain amount of uniformity to all classes of the population.

A. I would not penalise the *nikah* ceremony but the actual handing over of the girl.

Q. Among Hindus after a girl is married but before her *goana* takes place, it is considered a matter of great pleasure that the bride should come on ceremonial occasions not for the purpose of consummation but for the purpose of joining in the domestic festivities. In such cases there would be a possibility of consummation taking place secretly?

A. I would call it handing over, if a girl visits her father-in-law's house and goes back.

Q. In other words your object is to punish consummation but you would call it handing over.

A. By handing over, I mean the permanent transfer of the girl from her father's house to the house of her husband before the age of 14. If this be penalised the question of consummation and the difficulties in that connection would not come in and we will put a stop to the injurious practice at an early stage.

Q. Is there such a thing as the permanent transfer of the girl? Girls come to and go from the house of their parents from time to time.

A. You mean before the actual handing over. There is some sort of handing over in every community, whether it is *doly* or *goana*, after which

the wife remains at her husband's house; and if she visits her father's house, she does it as a guest.

Q. There will be endless difficulties. If we penalise what you call the permanent handing over of the girl, it may be avoided by the girl coming and going from and to the house of her parents off and on without permanently transferring herself.

A. There will be considerable trouble if the husband is asked to keep his wife in a mobile condition. I don't think any husband would like it.

Q. Supposing the bride is the resident of the same city as it often happens, will not such a case arise?

A. I do not deny the fact that there can be such a case but it will be very uncomfortable. I do not think from the point of a husband it would be practical.

Q. We have to frame a law which so far as human ingenuity can go may obviate all loopholes.

A. I have never known a law in which all loopholes have been stopped.

Q. Can you suggest any measure for making the Age of Consent more effective?

A. The only method is to make the offence cognizable but that will mean "from the frying pan to the fire".

Q. Supposing we have social reform or women organisations in the country, and we give them power to make complaints or to bring such cases to light, would that be helpful?

A. Education in women is backward in this part of the country; therefore women's organisations will not be useful. Social reform organisations will be useful but not immediately because there is backwardness of education among the people.

Q. Supposing we have vigilance societies, either communal or local, will that be helpful?

A. If people are not prepared to give evidence in a murder case, how can they be expected to report such cases, getting other people's wives to the court.

Q. You have said that marital and non-marital offences need not be put down under different heads.

A. The word rape is very unpleasant from the legal point of view.

Q. Do you recognise that after all an offence by the husband is a mere technical offence whereas an offence by a stranger is an offence of a very heinous character?

A. If there is no consent then it is heinous but if there is consent it is not.

Q. Would it not be desirable for that reason at all events to make a marital offence a separate offence and call sexual intercourse by a stranger a rape?

A. We know that in the case of a stranger it is rape but otherwise there is no distinction in case of consent.

Q. Is the system of registration of births working efficiently in this Province?

A. The Mohalladar reports the birth to the *moharrir* in the municipality and it is recorded. The register is always kept in the office of the Civil Surgeon and copies can be had, if so desired.

Q. Is there any obligation on the parent or guardian of the child to make a report?

A. I do not know.

Q. How long does the Register remain in the office of the Civil Surgeon?

A. They have got registers as far back as 1895.

Q. Supposing we make it obligatory on the parents to make a report subject to a certain penalty, would that be helpful?

A. It should, no doubt.

Q. Would you like the idea of there being some provision requiring that all marriages should be registered or reported?

A. My own view is that registration of marriages is very useful, particularly in this Province. If you adopt the scheme which I submitted of penalising the handing over of the girl, then the handing over of the girl should be made compulsorily registrable. The loopholes will be minimised.

Q. Who should be the registering authority?

A. The municipality can do it.

Q. In rural areas?

A. Zaildars.

Q. Would you issue certificates to all persons who make reports of the marriages or of the handing over of the girls?

A. Yes, if they wish it.

Q. You mean to say that when a report is made, a certificate must be issued?

A. Yes, a court not recognising a marriage until it has been registered, for instance in cases of succession.

Q. Would you penalise the omission to register the marriage to this extent that unless registered the marriage would not for the purpose of succession or for the purpose of criminal law be recognisable?

A. I do not wish to penalise it. The court should not recognise a marriage which is not registered.

Oral Evidence of Khan Bahadur MAULVI SAIDUDDIN, Additional Judicial Commissioner, Peshawar.

(Peshawar, 25th September 1928.)

Chairman: You had been practising at the bar for a very long time.

A. From April 1908 to April 1926 and since then I am an Additional Judicial Commissioner.

Q. I hope you won't mind telling me whether you belong to the Sunni or Shia sect.

A. I belong to the Sunni sect.

Q. Do you know anything about Shia Mohammadans also?

A. Not much.

Q. Is there really so much difference between the two sects?

A. Apparently I do not find much difference. There may be some religious differences or on points of custom, but in this matter I don't think there is any difference.

Q. What is the general age of marriage amongst Mohammadans in this part of the country?

A. It is over 16, and in many cases it may be over 18. Sometimes you find that girls are married when they are 20—25.

Q. Is that in the towns or in the villages also.

A. I believe it is general.

Q. Would you make a difference between the town population, as regards marriageable age, and rural population?

A. Not so far as Mohammadans are concerned. I don't know much about the Hindus. I know this much that ideas have changed and customs have

changed among Hindus. In my childhood I do remember that child marriages were very common. Now-a-days it is a thing which is rather surprising.

Q. What do you put that to, general education or the law of the Age of Consent?

A. I don't think that the Age of Consent law had much to do with it. It is the general advancement in ideas.

Q. Do you think the Age of Consent Act as amended in 1925 is well-known?

A. I don't think so. Many people do not know anything about this amendment.

Q. Have you any reason to believe that there are cases in which cohabitation takes place before 13 but do not come to light?

A. I have no reason to think so, neither among the Hindus nor among the Mohammadans.

Q. Would you be prepared to say that the Age of Consent Act has been effective in any way in preventing marriages before 13?

A. As I have already said, among Musalmans in this part of the country there never was any such thing. Among Hindus apart from those orthodox people the ideas have changed and you don't find it, and the age of marriage is going up.

Q. Would you put that to Age of Consent Act?

A. No.

Q. What do you think about extra-marital cases?

A. In extra-marital cases so far as cases come to court we never find a case in which a girl below 13 or 14 had been subjected to this operation.

Q. Do you think the raising of the age to 14 as against strangers has served the purpose in any way?

A. It may have done in up-country. It has not had any appreciable effect here.

Q. Would you like to raise the age to make it appreciable?

A. Generally cases of rape that come to light are of fairly mature females, that is to say, above 16. In the first place there are very rare cases of rape which take place in this country and from those that do take place very few of them come to court. Whenever such cases do come to court generally the girl is of a very big age.

Q. Is there any very large number of abduction cases?

A. There is a certain number of cases.

Q. Within the last five years are they decreasing or increasing?

A. They are decreasing.

Q. Even in that case would you not say that the Age of Consent Act raising the age from 13 to 14 has had some effect?

A. So far as my experience goes, generally you will find that abducted women are women with children. It is very seldom that women under 18 are abducted.

Q. What would you like, the Age of Consent or the minimum age of marriage being fixed?

A. Personally I would like to have the minimum age of marriage fixed. But as I have already said I have got no experience regarding this in this part of the country.

Q. What would you put it at?

A. I will put it at 16.

Q. Would you fix any limit for boys?

A. Certainly, the age for boys must be 18. I think some such thing has been done by the Amir in Afghanistan.

Q. But we understand that there is a great deal of opposition too. They are not willing acceptors.

A. Well, there may be opposition. I don't think even now in Afghanistan a girl marries at less than 10. The opposition might be on sentimental

grounds, but as a matter of fact that is the practice. I don't think it touches them at all.

Q. Supposing the age of marriage was fixed at 16, do you think there is any chance of serious discontent?

A. Not so far as I can see.

Q. Is Doli ceremony prevalent amongst Mohammadans?

A. Doli ceremony is the consummation of marriage. When the whole thing is finished they bring the bride in the Doli and offer to the husband and that is called Doli ceremony. It synchronizes with the consummation of marriage. It is the same in North-West Frontier Province.

Q. Do you think there is any danger if the age is raised to 16 within the marital state of the girls going wrong?

A. It is already over 16. If they have gone wrong, they have gone wrong. This thing will not affect the matter one way or the other. I don't think they have gone wrong and there is no real risk in keeping the girls unmarried till 16.

Q. We were told by some Mohammadan witnesses that you will be increasing the chances of immorality by raising the age.

A. So far as my knowledge goes this is the actual practice. It is very seldom that you find a girl under 16 being married. Well, if they do, I don't think the legislation will accelerate it.

Q. Do you think, if we fix the age of marriage or make it penal, it will clash with any Koranic injunctions?

A. Well, I don't profess to be a Moulvi, but so far as I know the Koran makes puberty as the test.

Q. What is the age of puberty generally among Mohammadan girls here?

A. It differs in different parts of the country. For example, in this part of the country the age of puberty is generally later than in countries like Arabia and even in South India it is generally later.

Q. What age would you put among Mohammadans?

A. Between 14 and 16.

Q. Would you have the same age both for Mohammadans and Hindus?

A. Here also several factors act. It depends upon the surroundings and means. For example, a poor girl who has to work all her life generally attains her puberty later because she is not well nourished. Girls whose parents are of means and who live a luxurious life attain puberty earlier. Then there are climatic conditions. For example, those who can afford to take their families to hills in summer enjoy cold climate all the year round and in their case puberty would be delayed.

Dr. Beadon: Have you been working all these years in Peshawar?

A. Yes.

Q. Do you think legislation regarding registration of marriages would be acceptable to the people?

A. There was some talk of introducing this system here. I don't find any serious objection to it.

Q. Who, do you think, is the right person to register these marriages?

A. In the Punjab there is this system and this is done by the Mulla who performs the Nikah ceremony. He has a register in which he enters particulars.

Q. Does he not make any report to any civil authority?

A. I think his register at the time of evidence regarding age is admissible in the court of law.

Q. Is the age of the girl given there?

A. I think it is given. I am not certain.

Q. Are these registers kept permanently?

A. Well, they are. I had an occasion to see the register in Campbellpur district.

Q. When was this registration started?

A. I could not tell you that. I believe it started some ten years back.

Q. You say Mullas do it. Is it confined to the Mohammadans only?

A. I have not heard of any registration among the Hindus.

Q. Would you consider it advisable to have the same for Hindus?

A. I think it would be.

Q. Have you experienced any difficulty about finding their age?

A. There have been difficulties. It is very seldom that such cases come. Whenever the question arises generally there is very great difficulty. Somebody produces a medical certificate which shows that the girl's age is this and others run to the birth register. And the man might have two or three daughters entered in the register. Names are not given and there is a dispute as to which entry relates to which daughter. But generally it is not very difficult to find.

Q. Are birth registers kept in the cities?

A. They are.

Q. And in the district?

A. Yes.

Q. Who keeps them in the villages?

A. It is the chowkidar who keeps them and weekly he reports all births to the police station where they are entered and naturally those registers are sent to the district office from the police station.

Q. Are they kept permanently?

A. Yes, they are.

Q. You say it is difficult to identify the child sometimes. Would that difficulty be minimised if the name of the child is entered?

A. But generally when the entry is made possibly the name is not given. The name is given 10 or 15 days later. In the register you will find so and so born to such and such woman on such and such date.

Q. Do you have any particular objection to delaying the registration of the birth till the name is given?

A. The difficulty would be that the chowkidar might forget to enter altogether.

Q. How long after the birth of the child is the name given?

A. Within four or five days.

Q. Is there any serious danger of forgetting to enter then?

A. There is just the probability.

Q. Supposing it is made obligatory on the parents to report.

A. As a matter of fact it is now obligatory.

Q. Is there any punishment provided?

A. I don't think there is any punishment.

Q. Would you be in favour of imposing a small punishment by way of a small fine and do you think things will be improved if a fine is imposed?

A. There is no question that the things will be improved. Whether the people would accept it is another thing.

Q. If you make it legally obligatory.

A. Sometimes the people might make a default and might be hauled up.

Q. Do you think there might be some trouble?

A. Well, I cannot say. I don't know how people would take it. Personally I don't see any objection and I am sure it will improve matters.

Mrs. Nehru: You have said that according to Mohammadan law puberty is the only criterion of consummation but the age of puberty differs from 14 to 16. At what age would you fix the Age of Consent under the circumstances?

A. You may have it at 16.

Q. Do you think there will be no objection to it?

A. I don't see any objection to it.

Q. Do you think the Age of Consent law has been effective so far?

A. Well, I say, here marriages have been late without any legislation.

Q. In places where the marriages take place early do you think this law has been effective?

A. Well, I have no experience. I cannot say.

Q. Do you think if punishment is lightened it will improve matters, and bring more cases to light.

A. It is not quite the fear of punishment that stands in the way. It is the exposure. Whether you make the punishment light or severe it will be that exposure that will deter people from making complaints.

Q. Supposing cases are tried *in camera*.

A. It would be quite a novel judicial procedure.

Q. But will that help?

A. It might. If the parents are assured that their social position will not be affected possibly they might bring these cases to light.

Q. Who, do you think, should be given the right of complaint?

A. I think the right of complaint might be just like cognizable offences. Any person may make a complaint.

Q. Would you advise to make it cognizable?

A. Cognizable with certain limitations.

Q. What are those limitations?

A. The police should not at once start with the case. A report should be made to the District Magistrate. If the District Magistrate gives that permission then the case might be proceeded with.

Q. But why should any man bother to interfere with another man's case?

A. Just as in other cognizable offences, it is either the person who suffers or any person who is interested or any person who has his own axe to grind who complains. In cases like these if you leave it either to the relations of the husband or the relations of the girl you minimise the chances of cases coming to court.

Q. Would you advise any change in the procedure?

A. Nothing except that the enquiry should be subject to the permission of the District Magistrate.

Q. It has been pointed out that the mere fact that a case is prolonged for a long time becomes harassing to the parties. Having that in view will summary trials be an improvement in your opinion?

A. I would be against it.

Q. For what reasons?

A. For the reasons that in summary trials there is danger of injustice being done. There are no special records. The appellate court is not in a position to judge because there is only a sort of brief note. After all it is a very serious matter. It is not a petty thing.

Q. Do you think Mohammadans will favour the advance in the Age of Consent?

A. I do not find any objection so far as Mohammadans are concerned, except that there may be sentimental objection. The practice is even now to marry girls beyond the age that I am suggesting.

Mr. Mudaliyar: That sentimental objection would not be of a religious nature. Is it not?

A. If you want to raise objection you can give it any colouring. There is some ground. If they take the view that according to Muslim Law puberty is the only test or even for the sake of marriage there is no age limit, even a minor can be given in marriage but on attaining majority she has got the option of repudiation, they may raise objection. If you fix a certain age for marriage it conflicts with Mohammadan law.

Q. A small section of people may say anything, but you would not consider it to be serious.

A. I cannot pose to be an expert in Mohammadan law.

Q. But can you tell us whether it would really conflict with Muslim law?

A. I don't think any majority of the Mohammadans would seriously resent any legislation fixing the age of marriage in this part of the country. But I should say if it is really in conflict with Muslim law it may give rise to some trouble. In Afghanistan the President or Khalifa has said that when once the Mulla lays down that a certain thing is against Muslim law you cannot legislate upon that matter.

Q. In any case you don't think there will be any objection to fixing the Age of Consent.

A. No.

Q. At what age would you fix that?

A. Sixteen.

Q. Do you think if the age of marriage were not fixed and we had only Age of Consent law it would be obeyed and carried out?

A. I have seen cases in Hazara where betrothal was performed some years back and the marriage was thrown out; the man came forward and sued for the custody of his wife saying that all the formalities of Mohammadan custom and law had been observed and the marriage was complete. And in some cases it has been held that the marriage was complete. I therefore agree that it would be better if instead of fixing the age and penalising marriages below a certain age the age of consummation is fixed and penalised.

Q. How are we to find out whether this offence is committed or not?

A. It all depends upon the state of society. In this part marriages take place late without any legislation. You have got nothing to fear here. In up-country there may be some trouble.

A. Well, on this side of Lahore you will seldom find early marriages among Hindus even. Thirty years back they were very common, but the practice is now decreasing.

Q. You would not therefore recommend any legislation in this matter.

A. Well, I cannot say. Legislation or no legislation we are not affected. In up-country proposed legislation might help.

Q. You are suggesting that the police should not take up cases at all, without previous sanction, that even an application should not be registered, and no investigation should be made, unless the District Magistrate gives his consent. But you will give the right of placing materials before him to anybody who chooses to do so.

A. Yes.

Q. A suggestion has been made that the offence within the marital state may be made compoundable. What do you think about it?

A. I do not see any harm in that, though on principle I would say that if a thing has happened it happened with the cognisance of the relatives and they would be only too glad to compound and your object would then be frustrated. If you are really going to bring about social reform by legislation, you cannot leave these matters to those very persons who are probably the delinquents.

Q. As regards the punishment, the present punishment is two years or fine or both. There is a feeling that if you send the husband to jail for two

years it will ruin the life of the girl. Do you think that the husband will take his wife back on returning from jail?

A. Why should he not?

Q. The girl has been the cause of the ignominy of sending him to jail. Is that not so?

A. There is no doubt that some sort of estrangement will be created. But if you make the punishment a fine merely, you will not attain your object.

Mr. Kadri: Your statement was submitted by the Judicial Commissioner, Mr. Fraser. May we take it that you were consulted?

A. Yes, I agree with him and I remember the whole of it.

Q. So would you put down the Age of Consent in marital relations at 16?

A. Yes.

Q. And in the ultra-marital relations?

A. I would fix it at 18.

Q. You say that the practice of maintaining registers of the marriages amongst Mohammadans is current in the Punjab and that Kazis maintain such registers. Is there any such practice here?

A. There was, but I do not know whether actual registers are being kept now.

Q. Is there a Kazi Act here?

A. Yes, there is, but it is not being acted upon and the Act is not in actual operation.

Q. How does the register help?

A. Sometimes the question of Nika itself is disputed. In this register the names of the witnesses are also mentioned and this is useful in cases of dispute.

Q. Would you advocate the keeping of the marriage register for all the communities in the country?

A. Yes, it would be advantageous and will also help in cases where there is dispute about custody like S. 498 cases. This will certainly simplify matters.

Q. We are told that the completion of a marriage among the Mohammadan community in this district takes place in three stages, the betrothal, the Nika and the Doli ceremony. Is that so?

A. So far as I know, I will not put it as three stages. The first is the betrothal when the proposal about the marriage is made and some presents are exchanged. Then there is the Nika or the marriage ceremony. As far as I know there is no interval between the Nika and the Doli ceremony.

Q. Does not one year elapse between the Nika and Doli?

A. Not in Peshawar at least.

Q. Do you think that there will be any effect in penalising Doli ceremony under a certain age? The Doli is a public ceremony at which the relations of both the parties are invited.

A. Whatever it might be in other parts of India, we in Peshawar do not hear of the Doli ceremony as distinct from the Nika. It might be that sometimes disputes arise at the time of the reading of the Nika, and consequently the Doli ceremony is postponed, but not otherwise.

Q. Is the Doli ceremony ordained by Islam?

A. No.

Mr. Kanhaiyalal: You say that the Age of Consent within the marital relation may be fixed at 16. Would it be generally accepted by the Mohammadans and the Hindus?

A. I do not see any reason why it should be objected to by either the Hindus or the Mohammadans because their practice accords with that age.

Q. To whom would you give the authority to register marriages?

A. Some respectable persons should be given the right.

Q. A suggestion has been made that reports of these marriages should be made to the nearest authority, that is to say, in villages to the Tahsildar or the Sub-Registrar and in towns to the Deputy Commissioner. What do you say to that?

A. I think that would be resented. It is not workable because if marriages take place the party concerned will have to go to a distant place and report the matter. The report cannot be written and sent because there is then the danger of faked reports. Asking people to go and report at a distant place would certainly be resented because it will mean a lot of trouble and expense.

Q. If these registers are to be maintained by the Kazis are they not liable to interpolation and manipulation?

A. If a thing has been interpolated, it will be subject to examination. If you go by the possibility then there is a possibility of forgery even. In these cases you will have to leave some margin and select the best Mullas and Kazis, to whom the authority should be given.

Q. Would it not be desirable to have some outside authority to keep a common register for Hindus and Muhammadans? In the case of the Christians the Clergyman keeps the register of marriages and in the case of Parsis there is a Registrar of marriages. Do you not think that in the case of both Hindus and Muhammadans the Tahsildar or the Deputy Commissioner might be given the authority to maintain the register?

A. That might be an ideal state of affairs; but I do not think people will welcome it. It will be troublesome. I think if you start with the registration of marriages by the recognised Mullas and trust to their good sense, and give the right of supervision to the Tahsildar or the Sub-Divisional Magistrate, the thing will remedy itself. The chances of forgery are present every day and you should try to minimise them.

Q. Would you lay down that outside the licensed Mullas nobody shall be allowed to celebrate marriages?

A. Yes, and in the case of an unlicensed Mulla celebrating the marriage, he should get it registered in the registers of the Mulla who has got the authority.

Q. What would you propose in the case of the Hindus?

A. You have got the priest who celebrates the marriage and he can be asked to maintain the register. In my 28 years' experience I have never come across a case in which the factum of a Hindu marriage has been disputed.

Q. You think that this will help us in establishing the age of a girl as well as to prove the factum of marriage?

A. Yes.

Q. Amongst Hindus there is a profession called the priestly profession. They earn their living largely by the presents given to them on these ceremonial occasions; and unless you are prepared to license all of them, the question of license may lead to much opposition and trouble.

A. In such cases you might license a few and make it obligatory on the part of others to report to and get the marriages performed by them registered in the registers of the licensed priests.

Q. Supposing the Lambardar is authorised to make reports to the proper authorities, would it serve the purpose?

A. It will be the same thing as the Mullas keeping the registers.

Q. In the cities, can the Tahsildars or the Sub-Inspectors be asked to do the work?

A. I do not like the idea of officials coming in these matters.

Oral Evidence of Rai Sahib MEHR CHAND KHANNA, Peshawar.

(Peshawar, 25th September 1928.)

Chairman: Are you a member of the Municipal Committee?

A. I am a member of the Municipal Committee as well as of the Cantonment Board.

Q. Are you connected with Hindu Sabha?

A. I am the Honorary Secretary of the North-West Frontier Province Hindu Sabha.

Q. Would you be able to tell us from your experience what the general age of puberty is amongst Hindus in the towns and in the villages?

A. I am not conversant with village life, but in the towns it is generally from 13 to 14.

Q. Have you any reason to believe that though the present law of the Age of Consent in the marital cases is 13 there are many cases amongst Hindus where cohabitation takes place before 13?

A. In this part of the country the Age of Consent is not known at all. As regards marriage, previously people married their girls at an early age. But now there had been a certain amount of advancement in that direction and the marriage age is gradually going up. But generally after the marriage cohabitation takes place more or less immediately. It is rather difficult to keep the wife away from the husband. After the Doli ceremony the wife goes to the husband and stays with him and cohabitation takes place.

Q. Then do you think that the Age of Consent at 13 has not been effective on account of want of knowledge of the people?

A. Yes, people do not know the Age of Consent. If marriages take place later than 13 it is on account of the advance of public opinion.

Q. Do you think that the Age of Consent is rising?

A. I think so. People are making a certain amount of development in this direction.

Q. Do you think that this advance in the marriage is confined to a large section of Hindus or is it only a minority but a powerful minority?

A. It is a very insignificant minority who adhere to early marriages. The majority is going up. I think it is due to the advance of education and social customs.

Q. Do you consider marriage below 13 and cohabitation before 13 to be an evil?

A. I do consider that. Even below 15 it is an evil.

Q. Do you think that the age of marriage should be 15?

A. Yes.

Dr. Beadon: Do you know of any cases in your personal knowledge where the girls suffered on account of early motherhood?

A. Yes, I know of two cases. The girls were married when they were ten or eleven and they delivered at 13 or 13½. The result was that the first issue died after some time. These things took place about ten years ago and after that there was no issue at all. Both the cases were identically the same and I attribute it to early marriage.

Chairman: Do you think that women in this part of the country have changed their views about early consummation?

A. Yes, amongst ladies there is a change of view.

Q. Would you prefer fixing a minimum age for marriage or a higher age of consent?

A. I am rather for fixing a minimum age for marriage. The Age of Consent is a mere farce; that is my personal impression. Supposing you marry a girl of 14 to a man about 24 years of age. The man knows that the girl is his wife, and if the girl attains puberty at an early age nobody can

prevent cohabitation in such cases. My own impression therefore is that fixing the Age of Consent will be a farce. You should fix the minimum age of marriage, and I would suggest 15 as the proper age.

Q. What would you fix the age for extra-marital cases?

A. I would also put that at 15. I think a girl in this part of the country is quite fit at 15.

Q. You do not think the Age of Consent itself will be of use?

A. No.

Q. Why do you think that the Age of Consent Act raising the age has been ineffective?

A. It is not known at all.

Q. Would you put that as the main reason, or one of the principal reasons or as the reason?

A. I have not studied the question to that extent. It is very difficult to express an opinion on the subject.

Dr. Beadon: Is the joint family system in existence up here?

A. Yes.

Q. We have been told that in most parts it is dying out partly owing to the reason that the marriage age is going up. What do you think?

A. I do not think so.

Q. We have been told by some of the witnesses that there is distortion of legs of young mothers. Have you noticed anything about this?

A. Yes, I have seen cases like that myself. I know the case of a girl mother who has been going to the doctors for treatment but she has been told that she has passed any hope.

Q. Can you tell us of what age she is?

A. I think she is about 18 years.

Q. How long has she been suffering?

A. I think she was married six or seven years ago and has been suffering for the last four or five years. She was quite healthy before she was married.

Q. Has she had any children?

A. I think she has got one daughter but I am not certain.

Q. Apart from these two cases do you know any case in which the child may have suffered?

A. I have seen in Peshawar young mothers of about 13, 14 or 15 with anemic faces carrying unhealthy children in their laps. This is one of the causes of the infant mortality.

Q. We are told that it is not due to maternity but on account of bad economic conditions.

A. That may have a certain amount of bearing on the subject but I think it has much more to do with early marriages.

Q. Do you know personally of young mothers having given birth to a strong and healthy children? (Some of the witnesses have told us that young mothers have given birth to healthy children.)

A. There may have been cases but I cannot think any at the present moment.

Q. Some people have suggested that we might better register marriages. Would you be in favour of registration of marriages?

A. It might be a good thing, but there will be a certain amount of opposition in the beginning as it is always to a new measure.

Q. Do you think there will be great agitation here if marriage age is fixed at 14?

A. There may be a certain amount of agitation but I do not think it will be so much because after all the people have begun to realize what they have been doing in the past and what has been the main cause of their ruin.

There may be some orthodox sections among the Hindus who may oppose it but I do not think it will be serious.

Q. Do you think registration of marriages will help most?

A. Yes.

Q. Do you think that benefit will accrue from registration of marriages?

A. Yes.

Q. Who should be the person to register the marriage?

A. In the case of the municipality I would keep the register with the Secretary.

Q. Who should go to the Secretary to report a marriage?

A. I think it should be made obligatory on the priest who solemnises marriage.

Q. Don't you think there will be any serious objection to that?

A. He is paid for that.

Q. What do you think of birth registration. We have been told that there was a great difficulty in determining the ages of children.

A. Yes, births are registered here.

Q. Is it satisfactory?

A. We have mohaladars who are held responsible for making such reports and so is the case with parents. There may be very few exceptions or omissions but in the majority of cases people do go and make reports.

Q. The difficulty in such cases is to identify the child. Supposing the woman gives birth to a female child every year and one of these three children dies, then how are you going to identify that the child in question is the 1st, 2nd or 3rd child?

A. I do not think it is going to help us at all unless the names are given.

Q. Do you think there is any responsibility of giving names earlier?

A. We do not give the names *in the beginning*.

Q. When do you give the names?

A. It is after a fortnight or a month. Sometimes we give a pet name to the child although the real name may be something different.

Q. How can you lessen that difficulty?

A. I do not know how it can be done unless the parents are made to give names after a certain period.

Q. Would you make a supplementary report when the name has been given?

A. Parents may forget.

Q. Don't you think that if there is some legislation on this matter that will be effective?

A. I think it will have a certain amount of effect.

Mrs. Nehru: You say that the registration of marriages will be opposed to some extent. Do you think that this opposition will be on grounds of religion?

A. No. The thing is that people never like anything new but when they get used to it there is no opposition.

Q. Mere opposition to a thing which is new does not last long unless there is something behind it.

A. There is nothing behind it.

Q. You have said that the marriageable age of girls is increasing. Can you tell us since when this tendency has begun?

A. I think it is during the last five or 10 years.

Q. Has there been marked tendency to marry late?

A. Not so much.

Q. Can you attribute it to some special cause?

A. Sometimes a girl married at 12 or 13 becomes a widow after a year or so. People are trying not to marry early so as to avoid widowhood.

Q. Any other cause?

A. In certain other cases you have a girl of 13 and she is married to a boy of 16 who is still in school. After about a year they get a child. The boy is in school and cannot maintain his child and the daughter has to fall back upon his parents. So that they are beginning to see the benefit of raising the age of marriage.

Q. Do you mean to say that it is on account of economic stress that they are realising the difficulties of early marriages?

A. Yes, also they see that girls if married young become very weak.

Q. What is the special cause of raising the age? The health point of view existed even before. Perhaps the economic factor is the new and most potent factor?

A. I should also put it to the education of ladies. When the mothers are advanced they would not like to see their daughters married at an early age.

Q. Do you think that ladies in general prefer early consummation of marriages?

A. I think that the old ladies take that view but the young generation is of the advanced view.

Q. Is there very much infantile mortality in Peshawar?

A. I cannot say exactly; I have forgotten it now. We had a sort of baby week and child welfare centres and I happened to be one of the secretaries. That was four or five years ago. We collected some figures to give lectures and I remember we did tell the public to the effect that infantile mortality was so much.

Q. Is early marriage prevalent in any section of society here?

A. Higher classes do not encourage it. It may be in lower classes. Now they have widow marriages also.

Q. How long has this custom been in vogue?

A. I think 5 or 6 years. Before that they never did it but they are doing it now.

Q. How many cases of widow marriage take place every year?

A. They are very few. It may be one or two cases in a year but it is a good start and in the right direction.

Q. Supposing it is impossible to penalise marriage before a certain age, do you think then that the fixing of the Age of Consent a little higher will be helpful?

A. It is a question of choosing between the lesser evil but I am not in favour of the Age of Consent. If you cannot possibly fix the marriageable age then do it.

Q. How much would you put it at?

A. I would also put that at 15.

Q. Could you suggest any means of making the law effective?

A. Yes, by propaganda. It will have a certain amount of effect.

Q. Whom do you think the right of complaint should be given in marital cases?

A. I see a very great difficulty in this direction. If you make it obligatory on the parents I am certain they will never do it being afraid of the scandal. If you give it to my neighbour, instead of being friendly, we are generally enemies. Naturally the right man will be your neighbour who knows your affairs but if you give him the right there will be no truth in these complaints, and there will be a great nuisance.

Q. If you think, as you just now said, that public opinion is growing in favour of late marriages then recognised social reform societies if given the power of complaint and prosecution ought to be able to work.

A. I don't see it is possible at all.

Q. For the sake of stopping other people from committing the same offence do you not think public-spirited people will be prepared to do this work?

A. They will get only abuses.

Q. Do you think any lightening of the punishment will facilitate the working of the law?

A. I do not think it will make any difference.

Q. Supposing the punishment imposed is only fine?

A. Fine would not have any effect at all as parents will have to pay this.

Q. Can you suggest any change in the procedure in these cases?

A. I do not know any thing about the procedure.

Mr. Mudaliyar: You say that during the last five or ten years there has been a noticeable change of public opinion for late marriages. Were early marriages very common before that?

A. I will restrict it to 15 or 20 years.

Q. Before this reform movement stepped in, were there early marriages?

A. Yes.

Q. Have you any reason to think that the generation born under this system are weaker than children born after the reform movement?

A. It is as they were before.

Q. Do you mean to say that under the old system of early marriage we were keeping the same health and vitality as it is now?

A. I do not think it is due to early marriages; it is due to sanitary conditions and good food.

Q. You suggest that we were more sanitary in those days than we are now?

A. I do not say so; we are much weaker.

Q. Some people's primary argument is that the generation born in the early marriages was not weaker than the present one. Therefore it is suggested that the early marriages have nothing to do with the bad health. Do you agree?

A. If you get a weak child it is very open to any kind of disease.

Q. You have said that the minimum age of marriage should be fixed at 15. There are difficulties in legislating for this. There may be cases in which a father must get his daughter married before a certain age. What would you suggest in such cases?

A. I would suggest that if we fix an age of fifteen then Local Governments and Administrations may be given a certain amount of discretion in the matter. They may fix the age or make exceptions in varying conditions.

Q. There may be cases in which early marriage may be desirable.

A. I think these will be very few and could be sacrificed for the whole.

Q. Would you give power to the District Magistrate to grant permission in the case of an exception?

A. The District Magistrate may not grant power.

Q. There are several Indian States who have that provision. Would that meet the situation?

A. It is a very difficult question to answer.

Q. Supposing permission is granted by some authority and cases are exempted on some recognised principles would you then have the Age of Consent fixed to cover up all those cases?

A. The Age of Consent is no good at all. That is my impression. It will not be beneficial and workable.

Q. You have referred to Doli ceremony. Is it common among the Hindus and Muhammadans?

A. Yes, so far the Hindus are concerned it is a very important part of ceremony.

Mr. Kadri: When does this Doli ceremony take place?

A. It is like this. At the time of the wedding the marriage party goes to the house of the bride and stays there for a number of days according to the status of the brides' parents. When the marriage is solemnised and the whole thing is over, during the early hours of the morning the Doli is taken to the house of the bridegroom.

Q. Does it mean consummation of marriage?

A. After that ceremony the girl is, however, brought back to her father's house and she is kept there for some time. During the time the girl is at her father-in-law's house the practice is that she is not allowed to go near the husband and this is generally done. But in some cases the husband and the wife do see each other.

Q. Some witnesses have suggested that you may have law penalising the performance of the Doli ceremony below a particular age.

A. I do not think there is any sense in that when you have the ceremony immediately after the marriage. I think there will be a strong opposition to it.

Mr. Kunhaiya Lal: You have said that the age of marriage might be fixed at 15. Do you think it will be acceptable to the Hindu and Muhammadan communities?

A. Well, I do not want to say anything about the Muhammadan community. Amongst the orthodox section of the Hindus there may be a certain amount of objection to it.

Q. Would you call that an inconsiderable section, a minority?

A. What I am referring to is the Sanatanist section.

Q. Is it a minority or a majority?

A. Sanatanists are in majority of Peshawar.

Q. So it would not be generally acceptable to the Hindus?

A. Amongst Sanatanists also they have got men of advanced views.

Q. Would it be generally acceptable then?

A. I should think so.

Q. Suppose there is no legislation fixing the age of marriage would you then recommend a law fixing the Age of Consent for marital cases?

A. I have said and I still hold the same view that the Age of Consent law is no good at all. It is very difficult to work.

Q. But suppose the Assembly fails to enact a marriage legislation for some reason or another, would you in that case have a second string to the bow, a legislation fixing the Age of Consent?

A. I think it would be quite a good consolation.

Q. Well, in that case what age would you fix?

A. Fifteen.

Q. Suppose there is a law fixing the age of marriage but a person wants to see a girl settled in his life time and celebrates the marriage in defiance of the law taking upon himself the risk of paying any fine or undergoing such punishment as the court may award; to cover such a case would you not have a law as a second string to the bow, fixing Age of Consent?

A. Well, in that case I would rather fall back upon exemption.

Q. Suppose an exemption is refused by the District Magistrate and the law is defied and the marriage is celebrated. The result would be that consummation can follow. If you want to stop consummation, would it not be desirable to have law fixing the Age of Consent?

A. I think we would have it at 15 then.

Q. Can you suggest any way making the law fixing the Age of Consent more effective?

A. I have already said you can only make it effective through propaganda.

Q. Would you like to have vigilance societies in every town and village either of a communal or of a local character?

A. That would be a part of the propaganda.

Q. Don't you think that social Reform Associations would, be of much help in the matter?

A. I think they would be helpful to a very great extent. If a man commits offence he tries to hush it up. The social reform movement may be successful in bringing it to light or checking such cases. People must try to set a definite example through propaganda and through preaching of the social reform ideas. The result would be that more cases will be known.

Q. Do you think that we should have women magistrates to try these cases?

A. I think, yes, they will be more interested.

**Written Statement, dated the 20th August 1928, of Rai Bahadur
LALA KARAM CHAND, O.B.E., Banker and Contractor, Peshawar.**

1. There is no dissatisfaction much in evidence against the present Age of Consent, except among social reformers and leaders of Hindu community.

2. I strongly urge an advance in the present law on account of changed conditions and times. The increased social intercourse among men and women for social, educational and religious or political purposes and increased contact among them in several vocations and walks of life render it most desirable that girls should enjoy special protection in preservation of their chastity. Girls cannot remain in a position of isolation now when they are competing with men for entry in all professions and hence advance in present law is called for.

3. The law courts can answer this question best, but in my opinion further raising of the Age of Consent and providing deterrent punishment for breach of law will minimise crime and afford the girls the protection which they require.

4. Early marriage is dying out or has nearly died among educated and high class people as the result of spread of education and it is prevalent to a great extent among orthodox and uneducated people who are under an impression that they gain heavenly merit by getting their girls married at an early age.

The amendment of 1925 has not brought about this reform among high-class people, but their changed outlook and the impact of western civilization are responsible for it. Cohabitation with husbands can't be prevented after marriage at whatever age it may be celebrated. No fear of law would stop it when marriage has once taken place. Early marriage, i.e., marriage before 14 (at least) should be penalised, and the Age of Consent be raised to 18 in the case of outsiders. These increases will go a long way in eradicating the evils we complain against.

5. The girls in this part of the country attain puberty between 13 and 14. It differs in different communities and depends upon the upbringing of the girls. It is hastened a bit by good and substantial food.

6. Cohabitation, as I have stated above, can't be checked after marriage. It becomes possible and frequent immediately after marriage, without any regard to its consequences. Cases of cohabitation before puberty or before

the age of 13 are not taken to court, as the girl-wife fears desertion by her husband and condemnation to a life of loneliness or shame. No Hindu father would take such a case to court for fear of disgrace and its disastrous consequences to his daughter.

7. There is absolutely no religious injunction enjoining marriage at an early age. The Vedic injunction is 16 for girls and 25 for boys. Marriage under 14 or 13 were discarded in good olden days. So wherever the practice of marriage before 12 prevails, it is due to *custom* or *ignorance* and is not supported by shastras.

8. This practice is not common in this part of the country. The Shastric injunctions enjoin "Garbhadan" ceremony, but they are not scrupulously adhered to.

9. The attainment of puberty is never a sufficient indication of physical maturity to justify consummation of marriage. The girls in India generally have no period of girlhood, they become mothers when they ought to be free to develop themselves physically. 16 is the proper age which should be fixed by law for consummation of marriage, but if this can't be done, then 14 should be the minimum age. In Peshawar it is our sad experience daily to witness deaths of young girl-wives at the time of first birth of a child. This is conclusive proof of their physical immaturity. Moreover, their children are always puny and don't live long. It should be noted that phthisis is more prevalent among young women than among boys. The young girl-wives can't face the *ordeal* of first delivery and when they survive it, they remain physical wrecks all their life.

10. I believe 18 is the age at which a girl would be competent to give consent to cohabitation with due realisation of consequences. How can a girl-wife of 13 or 12 understand the risk she is running and who would care for her remonstrances.

11. I know *scores of cases* in which cohabitation before puberty and before full physical development, has resulted in the death of girl-wives or their complete prostration after first delivery. We in Peshawar are accustomed to such sights. It is the height of cruelty to join girls of 12 in wedlock to a boy unless we want to exterminate our race. What outlook boys and girls of 12 or 13 or 14 can have upon life? Surely girls have not been considered as objects worthy of consideration and they are given away in marriage without a serious realization whether they are fit to enter marital stage.

12. Yes. I emphatically hold that early maternity is chiefly responsible for high infantile mortality and physical and intellectual degeneracy of our people. Where in the world except India would you observe such a high rate of mortality among children, over 20 per cent. of whom are carried away in the first year of their life. This would be substantially reduced if marriage before 16 (failing that, 14) is penalised.

13. There has been no marked development of public opinion in favour of extension of Age of Consent as I stated above, the demand is confined to social reformers and sincere well-wishers of Hindu community, but it is not vocal.

14. Early consummation of marriage has its votaries only among the *orthodox* and the illiterate. The higher classes and educated people are discarding it.

15. There should be women magistrates to try offences under Sections 375 and 376 and women visitors to report such cases. The Police should have no hand in such cases.

16. The margin of error in determining the age of girls would be substantially reduced if Age of Consent is raised to 16 in the case of husbands and 18 in the case of outsiders.

17. There should be a marked distinction between extra-marital and marital offences and the punishment in case of the latter should be deterrent.

18. I don't urge any change in procedure. There should be women magistrates to deal with such offences or such other body to be appointed for enquiry with the permission of the District Magistrate.

19. Leaders of social reform organisations, heads of communities and women visitors appointed by Government, should be empowered to report such cases. There should be women magistrates to deal with such cases. Police should not have anything to do with such cases.

20. I strongly urge that the minimum age of marriage be fixed by law. It should be fixed at 16 as ordained by shastras, failing this, 14 should be the absolutely minimum age. Any marriage below 14 should be penalised, as is done in several Indian States. Secondly the Age of Consent should be raised to 18 in the case of outsiders. This would intimidate wrong-doers to a great extent.

21. I don't rely on the progress of social reform to root out the curse of early marriage. It will take a century or more before the Hindus voluntarily bid good-bye to such cruel practices.

Legislation is the only remedy to secure the above object and the Government should not fail in its duty to undertake it, even in the face of adverse orthodox opinion which is based on ignorance, self-interest and absolute disregard to the interests of the community as a whole.

Oral Evidence of Rai Bahadur LALA KARAM CHAND, Senior Vice-President of the Peshawar Municipality, and President, Hindu Sabha, North-West Frontier Province.

(Peshawar, 26th September, 1928.)

Chairman: Are you the Senior Vice-President of the Municipality?

A. Yes.

Q. Do you know the state of affairs with regard to the marriageable age in towns only or in villages also?

A. I know the conditions in Peshawar only.

Q. What is the usual age of marriage amongst the Hindus in Peshawar?

A. It is 11 or 12 and sometimes 13.

Q. Do you think that the age of marriage is going up amongst the educated classes?

A. Yes.

Q. Do you think that there is still a large proportion of people who marry their girls early?

A. Yes.

Dr. Beadon: What do you mean by early marriage?

A. Marriage of girls at 10 to 13.

Q. Are you personally aware of any cases which are covered by question 11 of our questionnaire?

A. Yes, I know of scores of cases.

Q. Would you be able to give us details?

A. No, I cannot give details.

Q. In what way do the progeny suffer?

A. General weakness resulting in liability to diseases of all kinds.

Q. Do you know of any instances where the girls and their children were all right, though the girls underwent early motherhood?

A. The children are all right, but weak and anæmic?

Chairman: Do you think that such child marriages exist as a result of a consciousness of religious injunction or are they due merely to custom?

A. In some cases the practice is due to religion and in others to custom. We cannot separate the two.

Q. Have you reason to think that there is a large number of cases in which cohabitation takes place before 13?

A. If the marriage takes place before 13, cohabitation takes place before 13. Yes, there is still a large number of cases.

Q. Are you for fixing the minimum age of marriage at 16?

A. Yes.

Q. But as a compromise are you willing to fix it at 14 to begin with?

A. Yes, if Government will not help us in the matter. But my own personal opinion is that it should be 16. These things cannot be enforced except by law.

Q. Would you like to penalise early marriages; somewhat on the lines of Sarda's Bill, which fixes the age of marriage at 14 for girls and 18 for boys?

A. Yes.

Q. Supposing the age of marriage is fixed at 14, would you then have the Age of Consent fixed at 16?

A. Yes, but in my opinion it is rather difficult to prevent consummation after the marriage takes place. I would therefore have the age of marriage fixed at 16.

Q. You have suggested that 18 should be the Age of Consent outside the marital relation. Do you think that that will give a girl sufficient protection against strangers?

A. Yes.

Q. Do you think that there would be a great amount of dissatisfaction among the Hindus in the N.-W. Frontier Province, if a marriage law is passed?

A. Yes, because the people here are backward.

Q. Are you of opinion that the Government should face the risk of dissatisfaction, if any, to avoid the evils of early motherhood?

A. Yes, I would rather have the Government take the risk of dissatisfaction than allow this evil of early maternity to continue.

Q. Do you know the customs of the Muhammadans or of the Sikhs?

A. The Sikhs observe the customs of the Hindus, but I do not know anything about the Muhammadans.

Q. Do you think that the law raising the Age of Consent from 12 to 13 is generally known?

A. No; only some educated people know it, but the masses do not know it.

Q. Do you think that if it were made largely known to the people, the law would be more effective than now?

A. Yes; for instance most of the women appreciated the lecture delivered last night by Mrs. Nehru and they are coming to realise the importance of the subject.

Q. Do women realise that the marriage age should be raised in the interests of their children?

A. Yes.

Dr. Beadon: Some people say that if in extra-marital cases you raise the Age of Consent to 18, it would be putting a premium on immorality. What is your opinion?

A. My opinion is that if we raise the age to 18, we^l will give the girls time for education; and education will not make them immoral.

Q. Is female education progressing here?

A. No; till recently we had only primary schools and now we have a middle school. We have to send our daughters to the Queen Mary's College, Lahore, for higher education. There is no up-to-date school here.

Q. Have you come across cases in which there was difficulty in determining the age of girls?

A. Yes, it is not easy to do it.

Q. Is it on account of the registration of births not being satisfactory?

A. Some people do not know the rules and regulations of municipalities and neglect them altogether.

Q. Can you suggest any method of improving the system of registration of births?

A. We have here a system of registration of births by Mohulladars, but parents always neglect to inform the Mohulladars and the registers are not properly kept.

Q. Do you think it would be feasible to penalise parents in some way and punish them?

A. Even now there is a provision making it penal. If the people do not give timely information to the Mohulladar, they are liable to be punished under the Municipāl Act.

Q. What is the punishment in such cases?

A. A fine up to Rs. 50.

Q. Has that law been put into force?

A. Yes, I was myself a magistrate and dealt with such cases. I came across half a dozen cases during my time.

Q. Supposing there are 2 or 3 girls and one of them is dead, how can we establish the identity of the girls in such cases?

A. If proper registration is kept, this difficulty will not arise.

Q. The name of the child is not given for some time. Do you think that the registration of birth should be deferred till the name is given?

A. But then there will be difficulty about getting the actual date of birth of the child and this is wanted in some cases.

Q. In Simla a supplementary report is required to be made at the time the name is given to the child. Is that feasible?

A. Yes.

Mrs. Nehru: In para. 4 you refer to the orthodox and uneducated people. Do they exist in large numbers in Peshawar city?

A. In Peshawar these orthodox people are not many.

Q. Do you think that their number is very small?

A. No, they are more than the educated people; but if the age is increased they will not protest, but will follow the educated people. People in the villages will then do the same. People have come to realise the benefit of advancing the age in the case of girls.

Q. Do you think that the Age of Consent law has been effective so far?

A. No, not at least in Peshawar.

Q. What is the reason?

A. I cannot say.

Q. Do you think that people are reluctant to bring cases to light because they do not want cases of a private nature to come before the public?

A. Yes.

Q. Is it the stringent punishment that stands in the way of the cases coming to light or is it the fear of publicity?

A. The punishment is partly responsible. A mere fine should be sufficient.

Q. Will that be effective?

A. Yes, even a warning will be effective. I think the best course would be for such cases to be dealt with by the *Biradri* or some such respectable society.

Q. To whom should the right of complaint be given in such cases?

A. The police should not be there; but the power can be given to the Mohulladars.

Q. Do you think that if the right to complain is given to the parents or to near relations of the girl, they will utilise it?

A. No; they would like to keep an infringement of the law a secret.

Q. Would you give the authority to complain to the leaders of the community or to social reformers?

A. Yes, any well-wishers of the community will do.

Q. Who is to determine that the people are trustworthy?

A. The Government or the public. These people might be chosen in the same way as Municipal Commissioners are chosen.

Q. If it is not possible to raise the age of marriage to 14, do you think a higher Age of Consent can be effective?

A. Yes, it will be effective, if the age is raised to 16.

Q. In para. 13 you say that the number of people who demand this change is very small. Under these circumstances do you think that the raising of the age would be justifiable?

A. Yes.

Q. Do you mean that there is a large number of people who want this change, but they are not vocal?

A. Yes. Gradually this custom of early marriage is subsidising and the people are not now in favour of early marriages.

Q. In para. 15 you suggest that women magistrates should be appointed. Do you think it is possible here?

A. It is not possible at Peshawar. We cannot get such women here.

Mr. Kaulri: You are the President of the N.-W. F. Province Hindu Sabha. Can you tell us what the membership of the Sabha is, and, whether it represents a large section of the Hindu community?

A. I cannot tell you the exact number; but my opinion is that every Hindu should be considered a member of the Sabha.

Q. May I take it that the opinions you have expressed here are the opinions generally of the Hindu population of this province?

A. I got this memorandum only 3 or 4 days back. I could not collect general public opinion. But, I have taken the opinion of a selected number of people and they are in favour of the measure.

Q. Do you think that the general Hindu opinion will endorse this view?

A. Yes.

Q. You say that among the illiterate people early marriages do take place. Can you tell us whether the number of such people is more than half or less than half of the total population?

A. It is more than half.

Q. Is there early consummation before puberty?

A. Soon after the marriage the girls are taken to their husbands' houses. In almost all cases of this kind, cohabitation does take place.

Q. Do you think that even girls of 10 sometimes enter upon married life?

A. Yes.

Q. Is there any ceremony prevalent here before a girl permanently resides with her husband?

A. No such Maklawa ceremony is known in Peshawar.

Q. One of the witnesses told us that there was a Doli ceremony among Hindus and Mohāmmadans.

A. This ceremony is performed immediately after the marriage; it is especially so among the Hindus. It is performed on some, auspicious day after the marriage. It is not correct that the Doli ceremony takes place two or three years after the marriage.

Q. You don't think there would be any use in penalising the performance of this ceremony below a prescribed age.

A. There is no such practice in Peshawar.

Q. Some of the witnesses have told us that the orthodox Hindus and Mohammadans would rather prefer raising the Age of Consent to fixing the age of marriage, as the latter would conflict with their religious notions. What do you say?

A. When the marriage takes place, parents of both sides are anxious that the girl should go to the father-in-law's house. If she resides with her husband how is it possible to stop them meeting each other. There may be cases in which the father is very old and is anxious to see his daughter settled soon, but these are rare cases. You cannot make a law for them.

Q. You would not leave any exception or give discretion to the magistrate to exclude such cases.

A. I would not.

Q. You think 16 is the age at which a girl is fit to enter married life and therefore you would fix this as the minimum age for marriage. But are you in favour of having legislation of such a nature all at once or would like to have it piece-meal?

A. The sooner the better. All at once would be better. The world is rapidly advancing towards reform.

Q. You say that the Age of Consent law has not been effective so far, can you make any suggestions to make it effective?

A. I have not studied this question.

Q. You talk of women visitors. Would they be of any use in such cases?

A. There is no harm in that.

Q. Do you think we shall be able to get such women visitors in Peshawar?

A. I think so. Women are progressing. They are now coming out of the *purda*. Hindus are only imitating Mohammadans in respect of *purda* here.

Q. You have suggested that the power of reporting such cases might be given to social reform organizations. Do you think we shall get public spirited men and societies who will take upon themselves this work?

A. If something is done in the shape of law, that will help us.

Q. Are you in favour of marriage registers being kept under law?

A. That does not affect the Hindus. The Hindu marriage tie cannot be broken. This question was discussed in the Municipality and we gave it as our opinion that we do not want any such register. It would serve no useful purpose.

Mr. Mudaliyar: You say there is a Vedic injunction that a girl should be married at 16 and a boy at 25. Can you give us a reference to that Vedic injunction?

A. I have not got any Vedic authority.

Q. You say phthisis is more prevalent among girls than among boys. Do you attribute this to the practice of early marriage?

A. Yes.

Q. May it not be due to the secluded life which women lead here, that is, to the existence of the *purda* system?

A. Among the Hindus there is not so much *purda*. They go out in the open for a walk. It is true that poor people who live in the lowermost storey of a three or four storied house do not get fresh air and they have often got a big family. That may be one of the causes.

Q. You say you have seen scores of cases in which cohabitation before puberty has resulted in death. Do you think cohabitation before puberty is common among the low classes?

A. It is common.

Q. At what age is a girl generally married?

A. After 9 or 10 and immediately she goes to the husband's house. I know of a case of a grass-cutter which recently occurred.

Q. You would personally fix the age at 16 and not 14?

A. Yes, because up to that age girls cannot receive sound education. It is only as a matter of compromise and to conciliate orthodox opinion that I am suggesting 14.

Mr. Kanhaiya Lal: You are in favour of marriage legislation. Would you not like to have penal legislation fixing the Age of Consent to support and strengthen that?

A. Yes.

Q. You have said that in marital cases the punishment should be fine only. But there might be cases of severe injury resulting to the girl, where the husband is a grown up person, and there is a great disparity of age between the couple. Would you not recommend a severer punishment than fine?

A. I am against such sort of marriages.

Q. But there is no law preventing them.

A. Then it is a mistake of the father, let him suffer. I don't think it is proper to inflict a severer punishment on the husband.

Q. Do you think fine will be sufficient to meet such cases, even where the coitus may have resulted in the death of the girl?

A. I have the same opinion. It is the mistake of the parents. They should have seen whether the match was suitable or not.

Q. If you impose a severer punishment in such a case, would it not have a deterrent effect on other parents also?

A. Yes, they won't repeat the mistake.

Q. Having that in view would you not say that in marital cases the punishment may be fine or imprisonment or both according to the circumstances of each case.

A. The proper thing is a fine. I am not in favour of severer punishment. It is better to have a man punished by society than to send him to jail.

Q. Would you not recommend a maximum imprisonment of three months even?

A. No imprisonment whatsoever.

Q. In case the fine is not recovered.

A. Then of course there will be imprisonment.

Oral Evidence of Dr. (Miss) BIRCH, Peshawar.

(Peshawar, 26th September 1928.)

Chairman: How long have you been practising?

A. For about 4 years.

Q. You have been practising both among Mohammadans and Hindus.

A. Yes.

Q. Perhaps you may be able to tell us at what age girls attain puberty in this part of the country.

A. I have been in Delhi and this end of the country and what I have observed is that girls in this end attain puberty when they are slightly older. It is approximately between 14 and 15. It is the same in all communities.

Q. Perhaps you may not be able to say about Bannu and Kohat.

A. I have been to Kohat on several occasions but not to Bannu, and I found the same state of affairs there also.

Q. From the cases that you might have examined, are you in a position to say that the attainment of puberty is a sufficient indication of physical maturity for motherhood?

A. No. It depends upon the health of the patient. Strong girls are fit at an earlier age. Other weaklings and specially T. B. patients are fit when they are much older.

Q. Would you say if they are developed at 14?

A. I think so.

Q. Referring to question No. 11, have you come across cases where you would say that early maternity has resulted in some injury to the girl or any general decline in her health or her children?

A. I had cases in my own compound. My *dhobi's* wife was married when she was about 10. She had two children. At the birth of the third child she acquired osteomalacia.

Q. What was the age of mother at the time of the third child?

A. I am not certain. She got the first child one year after marriage and the second child two years after and at the time of the third child she got this bone disease very definitely. This is the only surviving child by the name of Fakaria and he is very undersized and is inclined to be slightly silly and the mother has since died. She was supposed to be 26 at death.

Q. What is the age of the third child?

A. It is about 10 or 11 years but I am not certain. She was married at the age of 11 or 12. Her first child was quite normal and when second child was born she got osteomalacia.

Q. At what age did the mother die?

A. I think it was about 24 or 25.

Q. During your 4 years' experience how many cases have come to your notice in which mothers' or children's health was affected?

A. In Delhi which is endemic centre of osteomalacia I have seen at least hundred cases but I cannot say whether this osteomalacia affects everybody in other places in the same way.

Q. In those cases in which you noticed this bone disease, do you, in the generality of cases, attribute it to early motherhood?

A. Yes, usually it is.

Q. Any noticeable results on the children of girl-mothers?

A. I have noticed but I cannot say whether it is generally the case. The children are unquestionably undersized and usually below the average in every respect.

Q. Would you connect maternity deaths and infantile mortality with early consummation of marriage? Do you think it is one of the causes, the cause or the main cause?

A. I can say that with loss of vitality all these come in a way.

Q. You think there is a ground laid for all sorts of diseases.

A. Yes.

Q. Within your experience what are the causes of infant mortality? A child, for instance, dying within the first 12 months of its birth.

A. Child motherhood is one.

Q. Is there any other cause?

A. The mother being a child herself practically she is not able to look after the little one. It is want of knowledge in bringing up children.

Q. Would you put it to hygienic conditions, unhealthy surroundings of the Indian houses?

A. Yes, but they can keep them clean but I daresay they have not the means.

Q. What about want of nourishing food; would you put that as one of the causes?

A. Yes.

Q. What about the approach of *dais* in confinement cases?

A. I would put that also. But there are hospitals where they can go free but they do not.

Q. Supposing a girl does not become a mother below 20 and other causes exist, do you think infant mortality will be reduced?

A. Yes, it will be reduced because it would not give lower vitality to the child to start with. That is the root of all evil.

Q. I do not suppose you keep any statistics in private practice?

A. No, not yet.

Q. Have any cases come to your knowledge where girls have been badly injured because an attempt has been made to bring motherhood before 13 or 14?

A. No.

Dr. Beadon: You told us that there are several causes for the bad hygienic conditions. Among others have you found drunkenness common among the Indians?

A. I do find it prevailing but it is not common.

Q. Do you find there is a great deal of venereal disease?

A. Yes.

Q. Do you find that this disease leads to sterility?

A. Yes, very often.

Q. We have been told that there are a great deal of hereditary syphilitic cases. It is common among the hill tribes. Have you found it here?

A. In very few cases; just one-third.

Q. Do women suffer from both gonorrhœa and syphilis?

A. Yes, often.

Q. Do you think that if a girl of 13 or 14 is infected with this disease she puts up less resistance than a girl of 18 or 20?

A. I have no experience.

Mr. Ramaswami Mudaliyar: You said that this disease is endemic in Delhi?

A. Yes, it is very prevalent in the city.

Q. Is that due to early marriage system prevailing in that city?

A. I would not make that sweeping statement.

Q. What do you think is the cause of this disease?

A. I have not thought over it. I have seen particular symptoms showing in other cases not only in Delhi but in Peshawar of young girl mothers which may be due to girl motherhood.

Mr. Kanhaiya Lal: Have you had cases in your experience of injury to girl wives due to first coitus?

A. No.

Q. If cases of that character come to you, would the medical men and women be ready to report them to the proper authorities so that action might be taken in case there is an infringement of the law?

A. We usually do it to the best of our ability.

Q. Will the medical profession have any objection to do so?

A. It all depends on the circumstances.

Q. If there is a serious injury, would the medical profession, if required by law, be ready to make a report of such cases to the authorities?

A. I will do it myself.

Q. Some people told us they would and some said they would not. We want some assistance from the medical profession and the public so that these cases may be brought to light?

A. I would be prepared to report such cases.

Oral Evidence of Dr. BHOLA NATH, Health Officer, Peshawar.

(Peshawar, 26th September 1928.)

Chairman: For how many years have you been Health Officer in Peshawar?

A. From August 1913 and for about 2 years I was away on military duty.

Q. As Health Officer, is it a part of your duty to register births and deaths?

A. Yes, within the municipal limits.

Q. Apart from that have you any personal experience of cases covered by question No. 11?

A. I can say by observation and not from personal experience.

Q. Have you come across such cases?

A. Such cases do occur.

Q. In large percentage?

A. Not very large.

Q. Can I have an idea of the results that you noticed among mothers and children?

A. Mothers generally become weak, emaciated and become a prey to phthisis. Generally they say that they have been in bed for a long time and cases are recorded as fever of long duration though it is due to phthisis.

Q. Anything about infants?

A. Infant mortality is very high.

Q. Do your records show the age of child mothers below 13?

A. There are no such records because mothers' age is not given.

Q. Will you be able to give us child mortality in a given year?

A. Yes.

Q. You will be able to give us statistics of deaths of women?

A. During 1927 the figures of female mortality are as follows:—

Age.	Number of deaths.	
	Males.	Females.
10—15	31	62
15—20	38	66
20—30	110	117

We cannot say the cause is early marriage.

Q. Will you be able to tabulate them and send them in a week or so?

A. Yes.

Mrs. Nehru: What is the infant mortality in your town?

A. It is about 210 per 1,000.

Q. Do you know if it is higher in other towns?

A. Yes, it is higher in Bombay or wherever there is congestion and women have to work.

Q. Do you think it is due to early marriages?

A. Yes, and also it is a question of economic distress, congestion, bad sanitation and we do not take any exercise.

Q. Is early marriage a great factor?

A. It becomes a big factor by increasing other diseases which are the direct result of early motherhood.

Q. Are there many early marriages here.

A. They are not too many but they are decreasing now.

Q. What is the average age of marriage?

A. It is 12 or 13 and previously I have seen girls marrying at 6, 7 or 8. That is among Hindus, and in the case of Mohamedans I cannot say.

Q. Does consummation take place directly after marriage?

A. In some cases it does.

Q. Is doli ceremony observed here?

A. It is observed as a form. When the girl is married she has to go to her husband's house. That is called doli ceremony but she comes back.

Q. Is even that performed directly after marriage?

A. Yes, she has to enter her father-in-law's house the first day.

Chairman: Do you say from your experience that child marriage, i.e., girls married before 13, is still prevalent among a large proportion of people?

A. Yes, to some extent.

Q. Would you say that of the cities?

A. Yes.

Q. Have you any knowledge of the villages?

A. They do marry. They buy the girl and until she is mature they do not consummate. There are child marriages in tribes too.

Q. I suppose the smaller girl the less the price?

A. That depends on the work the girl is going to do for them. When these girls in the tribes attain majority they work for themselves and earn money.

Q. Do you think the law has been known to people in this part of the country?

A. I do not think it has been known.

Q. Has it been effective?

A. No.

Q. Would you advise legislation fixing a minimum age for marriage?

A. Yes, that will help to some extent. That will also give a chance to social leaders to carry on propaganda and help them in educating the people. The law, if it is actually in force, will be of help.

Q. Supposing marriages are penalised, would it be effective?

A. No; nobody would like penalising. People would not go to courts.

Q. According to Sarda's Bill if marriages are effected before the ages fixed, the parents will be punished. Do you think this will make the law effective?

A. It will not be very effective unless it is supported by the society. If society does not support, the law will be of no use.

Q. Do you mean that the law should be backed by public opinion?

A. Yes, public opinion is the thing.

Q. As regards registration of births do you think that there is a difficulty in fixing the age of girls?

A. Yes, there is a difficulty.

Q. Would you suggest that the names of the children should also be registered?

A. Yes, that would be more effective.

Q. The names of children are not generally given till some time after the birth. Would you therefore have a supplementary registration at which the name of the child should be registered?

A. Yes, they have already got it in Lahore. The registration should be done within three months.

Q. Would it be necessary to penalise omissions to register births?

A. We are now penalising cases of omission. If the registration is not done within a certain period, we get the offender prosecuted and punished.

Q. Is it effective?

A. To some extent only, because some omissions cannot be traced and we do not get any information. In such cases people suffer in the long run when they want copies of the birth certificate for some purpose or other.

Q. Do you think that the system of Mohulladars maintaining birth registers is satisfactory?

A. In the case of births it is satisfactory but not in other cases. But even from these Mohulladars you get only second-hand information. Direct information is better in such cases.

Q. Do you find much of osteomalacia among women here?

A. Not much, but there is some because from the reports of the lady doctors we find there are cases discovered by them.

Q. Can you give us an idea whether it is common among young women under 18 or over 20?

A. It is generally below 15. After 20 the girls are fully developed.

Q. Is not the name of the disease entered in the death registers?

A. Death reports that we receive from the Mohulladars generally do not give information regarding the death. Even in the age there are discrepancies. They give only the approximate age.

Q. In the course of your private practice have you come across cases of injury to the parts?

A. These are cases in which the information is carried from one man to another by way of gossip. They are not generally brought to the notice of the public.

Q. Are there many cases of the kind?

A. There might be many cases, but they are not generally brought to the notice of the public or to the courts.

Mrs. Brij Lal Nehru: Have you heard of any cases of consummation below 13 in marital cases?

A. Yes, there are many. Girls of 13 have even got children.

Q. Why is it so in spite of the law being there?

A. Because nobody knows the law. The law has not been in force, and nobody has been punished up to now.

Q. If the law is made known, will cases come to courts then?

A. No, but there may be a reduction in the number of such cases.

Q. Can you suggest any means of the law being made effective?

A. Yes; it can be done by social propaganda.

Q. Do you think social propaganda has done anything till now?

A. Yes, it had some effect on the educated classes. They have now increased the age of marriage.

Q. Is public opinion advanced enough to justify an increase of the Age of Consent at present?

A. To some extent it is justified. If the age is different for different provinces to suit the different conditions, it would be better.

Q. Will the advance be justified in this province?

A. Yes.

Q. To whom should the right to complain be given?

A. Some societies, but not to the police. The authority can be given to such societies as the Jamia Islamia, the Arya Samaj, the Singh Sabha, etc. These bodies can influence people and make them understand things.

Q. You do not think that people will misuse the power?

A. Yes, if the power is given in mischievous hands. But if it is given to organisations, it will work.

Q. What do you think of the punishment provided at present? Is it drastic or is it sufficient?

A. It is sufficient but it has not been used. You very seldom come across such cases.

Q. Of the two laws, which is more workable, the law of the Age of Consent or the fixing of the age of marriage?

A. I think the age of marriage should be raised. That is far better.

Q. In case the law regarding the age of marriage is not passed?

A. In that case the Age of Consent may be raised.

Q. Can you tell us what generally is the age of the girls who are abducted here?

A. It is 12, 13 or 14; sometimes higher too. Generally the girls are minors.

Q. Do you think that if the age is increased in extra-marital cases it will give some protection to the girls?

A. I think so.

Q. At what age would you fix it?

A. 18.

Mr. Kadri: You say that if the punishment is reduced more cases will come to light. But we have been told that such cases do not come to light because of family reputation and scandal. In view of this would not the reducing of the punishment be ineffective?

A. It may have some effect. Sometimes the relations might complain.

Q. But might it ruin the reputation of the family?

A. But one has to prove the offence.

Q. Who should have the right to complain?

A. First, the girl; then the parents; then the mother-in-law or the uncle of the girl or others interested in the girl.

Q. It is suggested that complaints of this nature might be enquired into only with the previous permission of the District Magistrate. Do you think it is a safeguard?

A. Yes.

Q. Would you like the enquiry to be made by an officer not below the rank of an Inspector of Police?

A. Yes, it would be better; but the enquiry should be made through the heads of societies. If the District Magistrate is satisfied, the case should then be handed over to the Inspector of Police.

Q. Do you mean to say that on receipt of a complaint from the head of society the District Magistrate should proceed in the matter?

A. Yes, the investigation should be made through the head of the society. If the society is satisfied then the District Magistrate can hand over the case to the Inspector of Police for investigation.

Q. Are there such recognised societies or heads of societies in the villages?

A. In the villages the cases can be referred to the village Panchayats.

Q. Will respectable people be willing to undertake duties of this nature?

A. Yes, they are even now undertaking such duties.

Q. We are told that it is very difficult to get witnesses in such cases. What is your opinion?

A. I think they will do it for Government's sake. If asked by the District Magistrate, they will not refuse to give evidence.

Q. You have said that in order to make the law effective, two things are necessary, one, social propaganda and the other Government notifications. How can these be done?

A. Bulletins might be issued and circulated in the villages.

Mr. A. Ramaswami Mudaliyar: In your registers, under the head causes of death, is there anything to show the classes to which these persons belong?

A. You can get this from the abstract.

Q. Do you keep a similar classification under ages also?

A. No.

Q. Can you not classify the figures under ages also?

A. There are no forms for all kinds of classifications.

Q. What are the causes for a child being still-born?

A. There are many causes. One of these is early marriage. Another is syphilis.

Q. Is it common among Muhammadans?

A. I cannot say, because their girls go about in *purda*.

Q. Against the head still-born I find that 18 are Muhammadans as against 5 Hindus. What is this large difference due to?

A. Because the Muhammadan population in Peshawar is about 90 per cent. as against 10 per cent. Hindus.

Q. How many marriages take place in Peshawar per year?

A. I cannot give the figures because the marriages are not registered.

Q. Now the total number of deaths is nearly 2,400 and the total number of deaths under one year is nearly 500. Do you ascribe the latter very largely to early marriage?

A. To some extent to early marriage, but there are other conditions also. Sometimes it is due to want of proper nourishment amongst the poor classes.

Q. Supposing 40 per cent. of the causes that lead to the death of children under one year is due to early marriage, would you not say that the same percentage affects the deaths between the ages of 1 and 5?

A. No; it will be a higher percentage because greater number of children will die.

Q. A certain number of children die below one year and a certain number between the ages of 1 and 5. Now supposing you say that early marriage is a 30 per cent. cause so far as the death of children below one year is concerned, would you say that it is a 30 per cent. cause of the death of children between the ages of 1 and 5?

A. No; it will be lower.

Q. How is it then that the number of deaths between 1 and 5 is practically the same as under one?

A. Because the number of children between the ages of 1 and 5 is greater.

Q. What would you fix as the age of marriage if you were suggesting legislation for marriage?

A. 18 for girls and 25 for boys. In the case of girls, I would suggest 16 for purposes of legislation but my opinion as a doctor is that it should be 18.

Q. Supposing it is not possible to fix the age at 16 but only at 14 by legislation for the present, would you then have the Age of Consent at 16?

A. We have to then.

Q. In that case between the age of marriage and the Age of Consent there is a period of two years to be covered, and consummation should be prevented in those two years. Can you suggest anything practical?

A. Education and propaganda.

Q. If education and propaganda would be effective we do not require a law.

A. A legislation on the statute book will help propaganda work.

Mr. Kanhaiya Lal: Apart from your work as Health Officer, have you had private practice?

A. At Lyallpur I practised privately for 3 years. After I came here I have had no private practice.

Q. You have said that the Age of Consent might be fixed at 16 for marital cases. Do you think that would be generally acceptable to the Hindu and Muhammadan communities?

A. I cannot say, because I do not belong to this province but to the Punjab.

Q. Do you think there are many cases of infanticide in this province?

A. There are cases of infanticide; and we know them from the fact that such children are generally found in the drains. These are cases of illegitimate children; otherwise there is no infanticide.

Q. Is it a fact that in certain communities the number of births of males is double that of females?

A. Yes.

Q. Would you attribute it to normal conditions.

A. Yes, I would.

Mr. Kanhaiya Lal: In extra-marital cases what age would you recommend?

A. 18.

Q. In the course of your medical practice I suppose you have hardly come across any cases of injury to the girl.

A. I have not come across any such cases. Female doctors examine them.

Q. You have already suggested that a supplementary report should be required about the name of the child within a certain period. Can you suggest any other way of making the register of births more efficient and more satisfactory?

A. When there is more than one child we find a great difficulty. The name is not given. The Magistrate has sometimes to decide which child is intended. Just as Christians have their registers in the church, some such thing should be introduced in the case of other communities also. Horoscopes may be kept in the case of Hindus.

Q. Do you think that a supplementary report of that character will be helpful in establishing identity.

A. Now they have to guess or depend upon the medical evidence in most cases. This will certainly be helpful.

Q. Can you tell us how long these registers are maintained by the municipality?

A. Here they are from the year 1871.

Q. Is there no rule requiring their periodical destruction?

A. No.

Written Statement, dated the 23rd August 1928, of Khan Bahadur KULI KHAN, Assistant Commissioner, Peshawar.

1. There is no dissatisfaction with the Age of Consent as contained in Sections 375 and 376, Indian Penal Code. A girl of 14 years and above is competent to give an intelligent consent to cohabitation with a due realisation of consequences. She being a willing agent it will prove a great hardship to male alone for penalising the act which is the result of deliberate consent of both the parties. In this way the number of rape cases would surely rise. Consummation at 13 years is quite common amongst the Hindu Society. To raise the Age of Consent within the marital state, would mean the encroachment upon connubial connections and intrusion on the privacy of the marriage life. Admitting that cohabitation at this stage of life means great injury to the health and results in the weak progeny; but the remedy does not lie in penalising the act so common amidst the bulk of the population. It requires complete check against the child marriages, by fixing minimum age for marriages and penalising marriages below that limit. If the public opinion is not fit for the legislation the tone of the society is to be changed by zealous social work amidst the masses.

2. Reasons are given above. The Age of Consent as it should be retained.

3. These offences are not frequent here. Hence no special effect is traceable.

4. Amidst Mohammadans the marriages are not arranged before the 13 years generally. Amongst Hindus the cases are quite frequent and the amendment has not effected the child marriage which prevails and the consummation is not postponed. The reason is that the public is not aware of the fact of the change. Moreover the cases being not cognizable the police has no hand in the affair and cannot bring the culprits to book. The child wife herself owing to fear, modesty or ignorance is unable to move the law while the parents of the girl do not care to do so. Though the power of police in such cases will prove havoc and will open the avenue to evil practices, yet to safeguard against or to check the greater evil, we will have to accept the lesser one.

5. Girls attain puberty between 12 to 14 years. The girls in better circumstances attain it at 12 and the poorer classes at 13 or 14 years.

6. Yes, amongst Hindus the cohabitation is common before puberty. Soon after puberty and before the girls complete 13 years. No case has come to the court as yet as no one is there to set the law into motion.

7. I do not attribute to any religious injunction. It is a custom arising out of the lack of education.

8. No.

9. The question could be better answered by experts in medicine. As a layman I can say that puberty and maturity are not the same. It is 2 or 3 years after puberty that girl is mature and fully developed for healthy progeny and connubial connection.

10. At 14 years. In India the age of puberty rises from 9 to 13 years and a girl attaining puberty could understand the fatal consequences of such illicit relation.

11. No.

12. Yes. Health of the child wife is ruined and the progeny with weak body cannot live long. Healthy mind in a healthy body clearly indicates that the weak intellect is the outcome of immature relation.

13-14. No.

15. Yes. The medical opinion is to rely upon in such cases, because the births are not registered regularly in these parts. In the birth reports names of the children are not given. Medical opinion is not a sure test. Hence the birth should be registered regularly.

16. I am not definite.

17. Yes. The maximum punishment already prescribed is adequate.

18. In the cases of offences within the marital state it is required that those cases also should be cognizable offences.

19. If the offence within marital state be made cognizable to protect husbands against extortion and improper prosecution, no investigation should be launched without the sanction of the District Magistrate who should issue notice before such sanction.

20. Penal legislation fixing a higher age of consent for marital cases will be quite futile. To protect the health of the girls and get healthier generation, the minimum age of marriage is to be fixed. This alternative would prove effective. Though the public opinion would not accept it readily, yet this second alternative should be introduced at any rate.

21. Education and social propaganda are solid bases on which the tone of a society could be changed, but that is the problem of ages; and we cannot afford to lose the vitality of our future generation and wait for a century. It is obligatory that the minimum age of marriage be legalised.

Oral Evidence of Khan Bahadur KULI KHAN, Assistant Commissioner, Peshawar.

(Peshawar, 26th September 1928.)

Chairman: You are Assistant Commissioner in Peshawar?

A. Yes.

Q. How long have you been in Government service?

A. I joined service in November 1901.

Q. Do you belong to the Sunni or Shaiha sect?

A. Sunni.

Q. In the matter of marriageable age, do you think there is any difference between the two sects?

A. There is none regarding marriageable age. The only difference is with regard to Mutah which the Sunnis deprecate and the Shaihas advocate.

Q. What is the general age of marriage among the Mohammadan girls?

A. 16, 17 or 18.

Q. And boys?

A. About 20.

Q. Do you think there is a large number of men amongst the Hindus that marry below 13?

A. Not now. They are giving up this bad practice.

Q. You don't think there is a large number of Hindus in Peshawar who marry below 13.

A. Not many. There are cases in Shankargarh. There the girls are being married between 12 and 13. I have been a Tehsildar there for four years.

Q. What would you say about Peshawar Hindus?

A. I am not much acquainted with Hindus here. I have been here only for the last two years.

Q. Do you favour a law penalising marriages and fixing the minimum age of marriage as a more effective remedy than the age of consent?

A. I can say that is the only remedy to stop this evil. If you have the age of consent nobody comes forward. The parents give the daughter in marriage, they don't come forward. In my whole service I have had one case. I was trying that as an Additional District Magistrate, but I found that I could not try the case and so I reported to the District Magistrate. That case came up only because there was difference between the parents of

the husband and the wife. Otherwise that also would not have come up to the court. According to the doctor's evidence the girl was under 12. This case was from the Khansama class and it was from Kandoor district.

Q. Was that a case of grave injury to the girl?

A. Yes. The lady doctor gave full evidence.

Q. Do you think that was the reason that induced them to bring the case to the court?

A. No. That might be the ostensible reason. But it was the difference between the parents of the girl and the boy that induced them. If that were the reason the parents would not have given the girl in marriage.

Q. Do you think that this law penalising the marriages should be enacted even at the risk of displeasure of public opinion?

A. It is for the safety of the people, it is for the good of the people and most do not understand it. After reading so much about "Mother India" I have changed. I think general interests of India require that this law must come. His Majesty the King of Afghanistan has fixed 20 for girls and 22 for boys. There was the opposition of the Mulla. He established it from the Koran that there must be intelligent consent and puberty. It is not puberty alone but there should be development. Therefore he has legalised it at 20 and 22.

Q. If such a law was passed what age would you fix here in India?

A. I think 14 would be suitable.

Q. And for boys?

A. 18.

Q. Do you think that as a beginning that would be good?

A. Yes. Then afterwards you can raise it. If you legalise the minimum age of marriage I don't think you will require the age of consent.

Q. Would you make it a cognizable case with the previous sanction of the District Magistrate?

A. When he receives the information that an offence has been committed he should move the police. The investigation must be carried out by a gazetted officer, and then only it should be handed over to the police. This investigation must have the previous sanction of the District Magistrate.

Q. Do you think such a law penalising marriages below a certain age would cause any dissatisfaction here among Hindus and Mohammadans?

A. Absolutely none. Let the age be 20 and not 18 for boys.

Dr. Beadon: You say in answer to question No. 12, yes. Won't you mind giving us details?

A. In those cases which I have in mind the girls were married when they were of a very tender age. Their sons died quickly. There were miscarriages and things like this.

Q. Children died after a month or two.

A. I cannot say correctly. They died within a short time of their birth. I was told that the girls also die on account of having no good *dais*.

Q. We have been told that the cause of deaths is not the young mothers but the *dais* who do work so badly. Do you also think the same?

A. Not to my knowledge.

Q. Would you be in favour of registration of marriages?

A. Yes.

Q. Who would you have registering these marriages?

A. There should be some one like the Qazi. This question came up before the municipality here. But they did not approve of that. One objection was that they did not like to have the names of the girls registered and the other was that more the record greater the complexity. More cases will be paraded. The Qazi would make false entries. It was also said that before

the Registration Act there were less cases but when the Registration Act was passed the number of cases increased.

Q. Would you have a Government Officer registering these marriages?

A. I think that would be better. I think the Ziladar should do that duty.

Q. What about the registration of births? Is it satisfactory?

A. It is done but the name is not given.

Q. If the name is given would that do?

A. But the name is not given until several days after. They should be registered when the name is given.

Q. Or the column of the name should be left blank and a supplementary report should be asked for after 7 or 8 days when the name is given. Would there be any objection to that?

A. No.

Q. Who should do that, the chowkidar or the parents?

A. The parents.

Q. Would you be in favour of penalising the parents who fail to do so?

A. A nominal fine, say, 5 rupees, may be imposed.

Mrs. Nehru: In your statement you have mentioned that in Hindu society consummation of marriage is common before puberty. May I ask whether you have made that assertion in accordance with your personal knowledge?

A. I have been in Shankargarh for three or four years.

Q. You can only speak about Shankargarh people therefore. Is it not?

A. I know of Shankargarh Hindus only. When I received the questionnaire I sent it to some Hindu gentlemen and they have said that consummation takes place before puberty.

Q. Even in Shankargarh did you find it common or in rare cases only?

A. If the girl is married it does take place.

Q. Are the girls generally married before 12?

A. Very seldom. The practice is decreasing on account of education.

Q. Is Doli ceremony prevalent among Hindus and Mohammadans?

A. When the wife goes to the house of the husband, that is called "Doli" ceremony.

Q. When does it take place?

A. Just on the day when the marriage is solemnised.

Q. Do you oppose the age of consent only because of its being ineffective?

A. I don't oppose it. I say it should be fixed at 14. I think at 14 a girl can give intelligent consent.

Q. Why, do you think, such cases do not come to light?

A. Because the parents are the criminals, who should bring these cases. They know perfectly well the age of the daughters. They won't bring these cases to the court. I have not seen one case being brought to light by the parents.

Q. Supposing no law for marriage is possible to have, do you think then the age of consent will have some effect?

A. Not in this part. There are some cases in Shankargarh where some people make money out of these poor girls. Here these cases never occur.

Q. Are abduction cases general?

A. Very few.

Q. What is the age of the girl abducted?

A. 17 or 18, not younger than that. It is only grown up girls that are abducted.

Mr. Kadri: You have no objection to the age being raised to 14?

A. No.

Q. You think that the marriage legislation penalising marriages below 14 would not be looked upon with any resentment by the Mohamedans?

A. In this Province you can raise it to any limit.

Q. You are very well acquainted with the tribes. When do they marry their girls?

A. They are quite different. They cannot find girls and they do not marry before 17 or 18 or even 20.

Q. Some people have told us that because girls of young age can be purchased cheaper, they marry early?

A. No, they do not know the tribal territory. The husband has to find money to pay to the bride's parents.

Q. You are acquainted with the Quoranic injunction and the Islamic law, and, you are satisfied there will be nothing against the Islamic law or Quoranic injunction if we fix the minimum age for marriage?

A. No.

Q. Quoran is rather in favour of giving the girl power to repudiate the marriage when she is major provided it is not celebrated by her father or grandfather.

A. I have never come across anything which would show that even a father has power to celebrate marriage on behalf of his daughter. Leaving the opinion of the jurists alone there is nothing in the Quoran. There is no warrant in the Quoran authorising parents or guardians to give away their daughters in marriage. Quoran says that they may be capable of contracting a civil contract, but that can only be done when they are major.

Q. And you know according to Mohamedan Law one of the objects of marriage is to procreate *awladi saleh* that is children of sound mind and sound body, fit to serve God and His creatures. Such children can only be procreated by grown up and strong people. Would that not be an additional ground for raising the age of marriage?

A. Yes.

Mr. Mudaliyar: You have said that 14 should be fixed as the age of marriage for cohabitation. Do you realise that at 14 a girl is not fully developed?

A. But there are orders that after she attains puberty she is quite fit in every way. She attains puberty at 12 or 13.

Q. Will she be mature enough to understand the consequences to sell her body at the age of 14?

A. Yes, she would be quite fit at 14.

Q. You yourself say that a girl is fit 3 years after attaining puberty and you say that girls generally attain puberty at 13. If you add three years it will be 16. Therefore there are cases in which a girl may not be fit till 16. Is it not?

A. I think they are fit for consummation at 14.

Q. If she is penalised you would not object to the age being raised to 16?

A. No.

Q. That is above 14 you say that you are agreeable to penalise provided the girl also is penalised?

A. Yes.

Q. As a first step you suggest 14? You do not say that 14 is sufficient.

A. Yes, personally I think it should be more than 14.

Q. Have you any idea of what the feeling of the women among the Musalmans is in this matter? Would they like legislation fixing a minimum age of marriage?

A. That does not occur among us. Our women are married when they have attained puberty and therefore they cannot realise it.

Q. You would give the right of complaint to the public at large. Would you suggest that the District Magistrate should give previous sanction in that case?

A. Yes.

Q. When granting sanction you would suggest an investigation by a superior police officer and that you think is a sufficient safeguard against extortion?

A. Yes, I think so.

Q. You are not in favour of lowering the punishment in marital cases?

A. No. I am in favour of increasing it but not lowering it.

Q. It has been suggested that if a husband is imprisoned for 2 years the relations between him and his wife are bound to be very bitter after his return. Therefore it will not be a happy and smooth family afterwards.

A. He must suffer the consequences.

Q. But the consequences may fall on the girl-wife.

A. Among the Mohamedans there can be divorce.

Q. What about Hindus?

A. If there is some law it will minimise the whole thing. If Hindus cannot marry another girl they will have to put up with that woman. They will have to start a new life and condone it afterwards.

Q. At present the Hindus can marry a second wife as a Mohamedan can?

A. Yes, I have seen cases among the Bania Hindus?

Q. But in such cases the girl's life will be ruined?

A. Such cases are very few.

Mr. Kanhaiya Lal: You say that among the poorer classes girls attain puberty at the age of 13 or 14 years. If that is the case, would you postpone consummation for 2 or 3 years after that?

A. No. When she has reached the age of puberty I would not recommend postponement of consummation.

Q. You have said that it is two or three years after puberty that the girl is mature, developed and fit for healthy progeny. If she is not fit for healthy progeny till two or three years after puberty, would you be right in saying that consummation should take place at 14?

A. You require a general law and that will be in favour of 14.

Q. There may be cases in which puberty is not attained till 16.

A. But the law should be on general principles.

Q. The object is to prevent injury to the girl-wife.

A. Consummation at 14 will not produce any injury.

Q. If she cannot be mature and fit to bear healthy progeny till 2 or 3 years after puberty, are you not running a risk in allowing consummation before the expiry of that period?

A. That will be in very few cases and if you increase the age it will affect other people who want to marry at 14.

Q. When saying here that a girl is not mature and fully developed till 2 or 3 years after puberty, are you not referring to the generality of cases?

A. 12 years is the age of puberty and if you add 2 years it will be 14.

Q. You have said 12 to 14 years. From 14 years two or three years will be 16 or 17?

A. No, I will take 2 years after 12.

Q. Would it not be safer in the interests of the girl and her progeny that the age should be fixed at 15 or 16 years?

A. It will not be acceptable to the people.

Q. Will it be acceptable to the Mohamedan community?

A. No.

Q. There will be no difficulty so far as the poorer classes are concerned because they do not attain puberty till 13 or 14?

A. But we have got very few poorer Hindus.

Q. Do you think the educated classes will agree?

A. I have not consulted the educated classes but personally I think they might accept.

Q. It is for the sake of orthodox classes that you are putting the age limit at 14 because you say the Mohamedans are willing and poorer classes are few and their limit is higher and educated classes would not object?

A. It is only as a first step of law that I am suggesting 14 otherwise the higher you get the better.

Q. Frequent revision of the law is considered undesirable because it disturbs the minds of the people.

A. When you have educated the people and they have come to realise the benefit there will be no opposition.

Q. Will not legislation have the effect of stimulating public opinion and help advance?

A. Yes, if the legislation prescribes some penalty. There will be opposition in the first instance but when once you have introduced a law the exemplary punishment will have a very good effect. For introducing a new law you should go slow.

Q. You have said that the magistrate should be approached for his opinion before the investigation is started?

A. I think the investigation should be started with the sanction of the District Magistrate.

Q. In other words sanction of the District Magistrate should be obtained before the investigation by the police is started and you further say that no further sanction should be granted till a notice has been issued to the parties concerned.

A. Yes.

Q. Is there not a danger that the parties concerned might endeavour to suppress evidence if they have reason to know that the case is going up for consideration before the District Magistrate?

A. Medical evidence cannot disappear and the age of the girl cannot disappear. All that you require is the medical evidence and the evidence of the age of the girl.

Q. You would not start investigation till the District Magistrate has granted sanction and if you do not start the investigation the question of getting the girl medically examined will not arise?

A. I mean the investigation by the police should not start. As soon as the District Magistrate is moved he should investigate himself and when he has satisfied himself he should hand over the case to the police.

Q. If the police are not to take the case in the first instance then who should move the District Magistrate?

A. The District Magistrate should be approached by some public man, he should satisfy himself that there is something and then he should give sanction that the husband should be proceeded against.

Q. Would you have that investigation through the Superintendent of Police?

A. No, he should investigate it himself. He should record the statement of the girl and the parents should have the girl medically examined.

Q. In other words you would drop the ordinary procedure laid in Section 202 of the Code of Criminal Procedure?

A. If you think that there is a case for further enquiry he should either call for police report or issue a notice.

Q. You mean he should carry on the case up to the end or send it to the police for enquiry and get a report and start enquiry?

A. When he is satisfied then he should hand over to the police.

Q. I understand from you that you are not suggesting the grant of sanction as a preliminary prosecution but you are only suggesting a preliminary enquiry to satisfy the Magistrate before any action is taken?

A. Yes, that is my object.

Q. Would you make the offence compoundable?

A. Yes.

Q. Then you would not mind colluding and settling the matter out of court?

A. It should be compoundable with the permission of the District Magistrate.

Written Statements of persons not orally examined.

Written Statement, dated the 2nd August 1928, of Mr. J. H. R. FRASER, C.I.E., O.B.E., I.C.S., Judicial Commissioner, North-West Frontier Province.

In forwarding a reply to the Questionnaire received with your Circular letter No. 42-A. C. C., dated 23rd July 1928, I have the honour to invite attention to the answer to question No. 4 in which the general conditions prevalent in the North-West Frontier Province are stated.

1. No.

2. The question is not one which has been seriously agitated in this Province. The people will be quite ready to fall into line with any legislation that may be adopted for the rest of India. My own opinion is that the age of consent might for the present be left at 14 years and that marriages and the consummation of marriages at a lower age in women should be prohibited.

3. Rape is not a common offence in this Province. In the last seven years the average number of prosecutions under Section 376, I. P. C., annually has been less than 30. This cannot be regarded as large in a virile population of 2½ millions which is swollen during the winter months by the influx of unruly nomads from across the border.

The amendment of the law in 1925 has had no effect whatsoever on cases of rape, nor are these likely to be affected by any change that could be made.

4. More than 90 per cent. of the population of this Province consists of Muhammadans, amongst whom early marriage and its consummation are ordained neither by the personal law of the parties nor by local usage. The question, therefore, is one that is of little more than academic interest here.

5. The age of puberty is believed to be 12-13 years in all cases.

6. See answer to question No. 4. Very few cases of sexual intercourse with girls under 13 years ever come into Court.

7. See answer to question No. 4.

9. I am not qualified to answer this question. On general eugenic principles I consider that an interval of at least two years should elapse between the attainment of puberty and the consummation of marriage.

10. Most girls of this part of the country would be sufficiently intelligent at the age of 15.

12. Undoubtedly early consummation of marriage and early maternity are largely responsible for the high rate of maternal and infantile mortality. They are of course by no means the only factors contributing to this result.

13. See answer to question No. 2.

14. It is believed that there is no such feeling amongst the women of this Province.

15. Undoubtedly in a few cases it has proved difficult to determine a girl's exact age. This, however, can generally be determined either by birth registers or by medical evidence regarding the woman's physical appearance. The problem is not of a very serious nature. It could be remedied by insisting on an improved system of birth registration.

16. The proposal would be of no assistance whatsoever in solving the problem set in question No. 15.

17. No; I would put extra-marital and marital offences on one and the same footing. This would create no difficulty in this Province at any rate, if the age of consent is left at 14 years.

18. If the two classes of offences are kept on one and the same footing, they should be governed by the same procedure in their trial.

19. No further safeguards are required.

20. So far as this province is concerned, I feel sure that a more effective step would be to fix a minimum age of marriage by legislation. The simpler the law, the more chance is there of its being effective.

**Written Statement, dated the 6th August 1928, of Mr. SHER KHAN,
Vice-Chairman, District Board, Attock.**

1. No.

2. (1) Even the existing age classes with Islamic law.

(2) No.

3. No. It has made no difference amongst agricultural population.

4. Yes.

(1) Generally girls marry much older than the prescribed age.

(2) Does not apply.

(3) No.

No steps are required to be taken.

5. Yes. Amongst Hindus 12 years and others 13 years.

6. No.

(1) No.

(2) Yes, if married.

(3) No.

None.

7. Amongst Hindus the girl marriage is being given up. Islamic law puts puberty at 12 years.

9. Two years after puberty.

10. This will require educational advance.

11. No instance on hand.

12—13. No.

14. In very exceptional cases.

15. Time and education will remedy this.

16. No.

17. Yes. The present punishment is adequate.

18. As at present.

19. No.

20. Penal legislation.

21. Social reform by education will be a permanent remedy

**Written Statement, dated the 9th August 1928, of Mr. N. RAM,
President, Arya Samaj, Bannu.**

With reference to your No. 42-A. C. C., dated 31st July 1928, I have the honour under instructions from the Arya Samaj, Bannu, to send herewith my answers to the questions contained in the questionnaire on the subject of "Age of Consent" Bill and to state that I am not anxious to give my statement *viva voce* before the Committee. I beg leave to add that the Arya Samaj, Bannu, in a general meeting held on the 5th of August 1928, resolved that it fully supports Dr. Gour's Age of Consent Bill as it stands as also Mr. Sarda's Bill re child marriages—it is rather of opinion that the minimum age for marriages should be 16 and 25 for girls and boys respectively.

1. Yes—the present law is not at all satisfactory and a change is highly desirable.

2. I have carefully gone through the present law on the subject and the proposed Bill and have noted the points of difference between the two. I am strongly of opinion that the Bill in question is a decided improvement and would meet with the wishes of the educated community in particular and that of public in general all over India. With the advance of education the mental vision of the people has naturally expanded. There was a time when early marriage amongst the Hindus was a rule and even religious significance was attached to this custom, but old orthodox ideas on the subject do no longer exist. The importance of social reforms is now being keenly and widely felt. Under the present law, intercourse of a man with his own wife below 13 and with any other woman below 14 years with her own consent is “Rape”. Clearly at this age a girl cannot be considered to have attained sufficient maturity of intellect, physical development or sex consciousness to be able to give a valid consent to an intercourse with her or to appreciate the consequences or importance of her act. The proposed age of consent, *viz.*, 14 years for marital and 16 for extra-marital intercourse is the minimum that could be fixed. I quite agree to the addition of Section 376A to penalise the intercourse of a man with his own wife between 13 and 14 years, although the punishment to be awarded should, as proposed, be lighter as compared with the offence of “rape” technically so-called.

3. The crimes of seduction and rape are not very frequent but at the same time they are not uncommon or unknown in this part of the country. It is an open secret that only a small percentage of such cases are reported or brought to Courts. In a majority of cases the girl keeps the secret to herself for reasons of shame involved in the disclosure if she can manage it. In a few cases where the matter leaks to the parents or other relatives of the girl, the majority are hushed up by them for similar considerations. If a girl is bold enough to inform her parents and the parents are bold enough to report the matter to the police, it not infrequently happens that for lack of judicial proof the case is not sent up to Courts and if it does come up, the conviction cannot be sure. So the statistics of law Courts cannot at all be a sure index as to the actual number of such cases. The change effected in the law in the year 1925 has had a very wholesome effect but the measure is not quite adequate.

4. Has been discussed above in para. 3. It may be broadly stated that early marriages or early consummation of marriages are not quite common in this part of the country either amongst Hindus or Mahomedans.

5. Generally speaking between 15 and 16 years. Of course some difference may be expected in the case of well-to-do families and those persons who enjoy more outdoor life than others. Seclusion (*parda*) and weather have also got some hand in the age of puberty.

6. Cohabitation with girls below puberty is not common except in the case of low class people.

7. No religious injunctions exist in any community enjoining early consummation of marriage. The old Hindu ideas about early marriage of girls have been blown off.

8. “Garbhadan” ceremony is not performed in this part.

9. In my opinion at the age of 16 which is the age of puberty an average girl has attained sufficient physical development to justify consummation without injury to her own health or that of her progeny.

10. 16 years, as discussed above.

11. I do not know of any particular case.

12. Yes. I am firmly of opinion that early consummation and early maternity are mainly if not solely responsible for physical deterioration of children and high maternal and infantile mortality.

13. Generally speaking the educated community feels interested in the change in the age of consent, but I think there is no particular development

of public opinion amongst the masses on this point. They simply watch the movement with indifference.

14. No. Early marriages are not frequent in this part of the country.

15. Great difficulties are experienced by Courts in arriving at a decision as regards the age of the girl concerned in cases under Section 375 and Section 376, I. P. C. There are only two courses open—either to go by the medical opinion or by birth registers. In some cases the latter are not available and even if available it is not unusual to find some discrepancies about the names of the children and their fathers. Medical opinion is never certain. The result is that in most cases the age of the girl cannot be definitely known. No special suggestions can be put forward to remove the difficulty except that the importance of keeping regular and correct birth registers should be brought home to the people as well as the public servants concerned.

16. There is some probability of the difficulty being reduced if the age of consent is raised as proposed, as physical development between the age of 14 and 16 is comparatively more marked and rapid than in tender years.

17. I have already given my opinion on this point. I think that an intercourse by a man with his own wife under 13 should be technically called "rape" and it should fall in the same category as extra-marital intercourse with a girl under the age of 16 and that intercourse by a man with his own wife between 13 and 14 years of age need not be so drastically punished but it should be penalised by providing a separate section as proposed. I also agree to the terms of punishment prescribed for each class of cases.

18. I have carefully noted the difference in procedure in the various classes of cases and fully endorse the same. I only suggest that an offence under Section 376-A be made compoundable by the wife with the permission of the Court.

19. The amendments with regard to cognizance by the police and hail, etc., as contained in Schedule II, are adequate safeguards. No further safeguards are needed.

20. In my opinion both the Bills, viz., Dr. Gour's Age of Consent Bill and Mr. Sarda's Child Marriages Bill, are absolutely necessary.

21. I am firmly of opinion that education of masses, civilization and social reforms are doubtful and slow and on the whole quite inconvenient methods of removing the defect and that legislation is the only direct and sure method.

Written Statement, dated the 10th August 1928, of Major J. W. THOMPSON GLOYER, O.B.E., I.A., Deputy Commissioner and Chairman, District Board, Kohat.

1. Considering the callousness and the indifference obtaining in the general public with regard to social matters and particularly those where legal proceedings intervene, it would be incorrect to say that there is any dissatisfaction with the state of the law as to the age of consent, it is entirely different matter whether the present age of the consent as contained in Sections 375 and 376, Indian Penal Code, is conducive to public welfare or not.

2. There is little to justify the retaining of the law of the age of consent as it is, on the other hand if an advancement is made on the present law it would necessarily lead to the general public welfare of not only women folk but of the society on the whole.

3. In the North-West Frontier Province, cases of rape are as a rule very rare but those of seduction are comparatively of common occurrence. The amendment of the law made in 1925 raising the age of consent to 14 years may or may not have succeeded in reducing the number of rape cases outside marital state. The matter cannot be stated with certainty as period elapsed is comparatively very short in which to form adequate opinion as to statistics and secondly because during the course of last 2 or 3 years there

has been a fairly rapid social progress in the society intellectually and morally which fact must of necessity eliminate the chances of offences relating to sex.

5. The usual age at which girls obtain puberty in this part of country is 14 years. It seems that in working classes, for instance sweepers, the girls obtain puberty comparatively at an earlier age than they do in better classes of society.

6. *Part I.*—Before puberty cohabitation is very rare in this part of country.

Part II.—Cases of cohabitation soon after puberty are comparatively more common, but in either cases the matter is very rarely brought to the Courts.

Part III.—Same as Part I.

7. There is absolutely no authority in Hindu or Mohammadan religions to enjoin a couple to be married before or immediately on attaining puberty. The practice wherever it prevails is due entirely to the defects in the social system, early traditions and blind ignorance of the parents and is greatly to be deplored.

8. No such ceremony is performed in this part of the country.

9. The attainment of puberty is certainly no indication of physical maturity to justify consummation of marriage. On one hand, the climatic conditions of this country bring about an early puberty to the girls, and on the other social customs prevent the girls from achieving sufficient physical development at the same age to justify consummation of marriage and particularly creation of children. It depends mainly on the individual case as to the suitability of the girls for marital purpose. It may be hoped that with the social progress the physical development of the girls will also improve, as the conditions obtain at present, where a girl normally attains puberty at the age of 14 years she is physically unfit for consummation of marriage until at least 18.

10. The question as to the age when a girl in India is competent to give an intelligent consent to cohabitation with due realization of consequences is very wide and the reply would vary with regard to different classes of society. Where education has come in, it may safely be asserted that a girl can give an intelligent consent at or about the age of 18, but among the masses it would be unsafe to allege that even a girl of 20 is capable of realizing the consequences of cohabitation in spite of the fact that her natural impulses give rise to desire for intercourse at a much earlier age.

11. There has been certainly a large number of cases in which cohabitation at or about the age of puberty but before full physical development has resulted in injury to girl's health but one very recent instance may be quoted for the sake of brevity. A girl well known to me was given in marriage at Kohat, after she had obtained puberty but before she was physically developed enough to withstand the consequences of marriage, the result was that within the year of the wedding a baby was born who was not destined to feed on its mother's breast and was brought up on artificial nourishment, with indifferent results. Before the second year had elapsed that mother gave birth to a second child and contracted an internal trouble which resulted in tuberculosis of Cæcum and a lingering and unfortunate death. The second baby is still alive but its constitution is extremely unenviable.

12. Yes—The result is enviable, intellectual and physical progress of the people are closely related to the general welfare of the mothers and where maternal and infantile mortality are high and the social custom enjoins mothers mourning over every loss of life, very little leisure could be expected from community for the achievement of either intellectual or physical advancement.

13. There has been no appreciable development of public opinion on the subject since 1925 so far as this province is concerned.

14. Certainly they do, because there is no female education and what traditions are handed down to them are relics of a dark barbaric past.

15. Difficulties are often experienced in determining the age of girls in connection with the said offences. Registration of births in the local municipalities is not very satisfactory, the sanction behind the breach of bye-laws relating to such registration is weak and often negligible. Medical opinion is extremely vague and untrustworthy. The only measure that could prove effective would be a stringent observance of the rules relating to registration of births. The name of the child should be compulsorily entered in the register immediately after one is given, and a breach to any of these rules be made punishable under the act of Legislature.

Written Statement, dated the 10th August 1928, of Khan Bahadur SADULLAH KHAN, Assistant Commissioner, Mansehra, Hazara, North-West Frontier Province.

1. There is no dissatisfaction with the age of consent as contained in Sections 375 and 376, I. P. C. A girl of 14 years and above is competent to give an intelligent consent to cohabitation with a due realisation of consequences. She being a willing agent it will prove a great hardship to male alone for penalising the act which is the result of deliberate consent of both the parties. In this way the number of rape cases would surely rise.

Consummation at 13 years is quite common amongst the Hindu Society. To raise the age of consent within the marital state, would mean the encroachment upon connubial connections and intrusion on the privacy of the married life. Admitting that cohabitation at this stage of life means great injury to the health and results in the weak progeny but the remedy does not lie in penalising the act so common amidst the bulk of the population. It requires complete check against the child marriages, by fixing minimum age for marriages and penalising marriages below that limit. If the public opinion is not fit for the legislation the tone of the society is to be changed by zealous social work amidst the masses.

2. Reasons are given above. The age of consent as it is should be retained.

3. These offences are not frequent here. Hence no special effect is traceable.

4. Amidst Mohammadans the marriages are not arranged before 13 years generally. Amongst Hindus the cases are quite frequent and the amendment has not affected the child marriage which prevails and the consummation is not postponed. The reason is that the public is not aware of the fact of the change. Moreover the cases being not cognizable the police has no hand in the affair and cannot bring the culprits to book. The child-wife herself owing to fear, modesty or ignorance is unable to move the law while the parents of the girl do not care to do so. Though the power of police in such cases will play havoc and will open the avenues to evil practices, yet to safeguard against or to check the greater evil, we will have to accept the lesser one.

5. Girls attain puberty between 12 to 14 years. The girls in better circumstances attain it at 12 and the poorer classes at 13 or 14 years.

6. Yes, amongst Hindus the cohabitation is common before puberty, soon after puberty and before the girls complete 13 years.

No case has come to the Court as yet, as no one is there to set the law, into motion.

7. I do not attribute to any religious injunction. It is a custom arising out of the lack of education.

8. No.

9. The question could be better answered by experts in medicine. As a layman I can say that puberty and maturity are not the same. It is 2 or 3 years after puberty that a girl is mature and fully developed for healthy progeny and connubial connection.

10. At 14 years. In India the age of puberty rises from 9 to 18 years and a girl attaining puberty could understand the fatal consequences of such illicit relation.

11. No.

12. Yes. Health of the child wife is ruined and the progeny with weak body cannot live long. Healthy mind in a healthy body clearly indicates that the weak intellect is the outcome of immature relation.

13—14. No.

15. Yes. The medical opinion is to rely upon in such cases, because the births are not registered regularly in these parts. In the birth reports names of the children are not given. Medical opinion is not a sure test. Hence the births should be registered regularly.

16. I am not definite.

17. Yes. The maximum punishment already prescribed is adequate.

18. In the cases of offences within the marital state it is required that those cases also should be cognizable offences.

19. If the offences within marital state be made cognizable to protect husbands against extortion and improper prosecution, no investigation should be launched without the sanction of the District Magistrate who should issue notice before such sanction.

20. Penal legislation fixing a higher age of consent for marital cases will be quite futile. To protect the health of the girls and get healthier generation, the minimum age of marriage is to be fixed. This alternative would prove effective. Though the public opinion would not accept it readily, yet this second alternative should be introduced at any rate.

21. Education and social propaganda are solid bases on which the tone of a society could be changed, but that is the problem of ages; and we cannot afford to lose the vitality of our future generation and wait for a century. It is obligatory that the minimum age of marriage be legalised.

Written Statement, dated the 10th August 1928, of Mr. M. GUL MOHAMMAD KHAN, B.A., E.A.C., Registrar to the Judicial Commissioner, North-West Frontier Province.

1. The answer is in the negative.

2. There is no agitation over this question in this province. 14 years appears to be the appropriate age of consent though 15 years would appear to be more appropriate in view of the climatic conditions of this province.

3. The offence of rape is not very common in this part of the country and the amendment of law in 1925 has not had any appreciable effect upon this kind of offence.

4. The majority of the population of this province is Mohammadans amongst whom early marriage is an exception rather than the rule. Girls are married generally at ripe age and, therefore, the question is not of much interest in this province.

5. Puberty is generally attained between 14 and 15 years. In the case of wealthy people it is a bit accelerated.

6. *Vide* answer to question No. 4. Cases of sexual intercourse with minor girls under the age of consent seldom come to Court.

7. *Vide* answer to Question No. 4.

8. This is unknown in this part of the country so far as muslims are concerned.

9. Attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. At least two years must be allowed to elapse between the attainment of puberty and the consummation of marriage.

10. In this part of the country a girl of 16 years would be sufficiently intelligent to give consent to cohabitation.

12. Yes, early consummation of marriage and early maternity are responsible for high maternal and infantile mortality. Inadequate medical assistance and the neglect of the laws of hygiene also contribute to this result to no small extent.

13. The answer is in the negative.

14. No.

15. It is only seldom that any difficulty is experienced in determining the exact age of a girl. The age can generally be ascertained either by birth registers or by medical examination of the girl concerned. The latter, however, is occasionally faulty and the remedy lies in improving the system of birth registration.

16. I don't think so.

17. No; I am not in favour of separating extra-marital and marital offences.

18. No.

19. No further safeguards appear to be necessary.

20. Legislation fixing the minimum age of marriage would appear to be more effective as far as North-West Frontier Province is concerned.

Written Statement, dated the 11th August 1928, of Major W. K. FRASER-TYTLER, M.C., Deputy Commissioner and President, Municipal Committee, Dera Ismail Khan.

I have the honour to refer to your letter No. 42-A. C. C., dated 23rd July 1928, with which you forwarded a copy of questionnaire on the subject of the age of consent with the object of obtaining my views in reply to it.

Copies of this questionnaire have been sent to various representative Hindu and Muslim gentlemen and although the time at my disposal has been too short to enable me to see that the replies, which I send you herewith, are entirely representative of the two communities of this district, I have no doubt that they certainly represent the views of the large majority.

With reference to para. 4 of your letter you will no doubt agree that it will not be of very much use for me to give oral evidence on this question.

Mr. Nur Bakhsh has also expressed his unwillingness to give oral evidence, but Mr. Jhinda Ram would doubtless be prepared to do so.

Written Statement, dated the 4th August 1928, of R. S. JHINDA RAM, Advocate and Junior Vice-President, Municipal Committee, Dera Ismail Khan.

The questions are answered herein below.

4. In my opinion the amendment of 1925, raising the age of consent within the marital state to 13 years, has not proved effective in protecting married girls against cohabitation with husbands within the prescribed age limit. It has not succeeded in postponing the consummation of marriage or putting off marriage beyond 13 years. The reason is that cases of cohabitation by a husband with his wife are never detected. The state of society is such that it is very difficult for any girl to complain to the authorities against her husband in respect of this act. She altogether depends for maintenance on her husband and would never like to take risk of starvation if her husband is sent to jail. The relatives and friends of both the married couple would discourage the girl from seeking the help of authorities in this connection. They would not like to humiliate her by

producing her in the court to bring the complaint. It is no wonder then, that not a single case of rape, within marital state, has come up before the courts in this part of the country during my lengthy experience in the Bar.

There is no doubt that public opinion against early cohabitation is permeating the people, but this is not on account of the legislation but on account of the social reform. The only step which I can suggest against early cohabitation is that early marriage should be stopped by legislation as in that case there will arise no occasion for early cohabitation.

7. I cannot attribute the practice of the early consummation of marriage before or at puberty to any religious injunction. There was an old idea in the orthodox Hindu community that religion provided early consummation of marriage, but I am glad to say, that this idea which was not based on any genuine religious authority has been blown up by preachings of social and religious reformers, and the people, even those who are extremely conservative, have come to realise that the old idea was wrong and unfounded. The people therefore will welcome any step the Legislature may take to stop early consummation of marriage.

8. In this part of the country no "Gaona" or "Garbhadan" ceremony is performed but marriage is consummated as soon as it is celebrated. It is necessary therefore that in order to stop the evil of early cohabitation the performance of early marriage must be penalized by the Legislature.

9. Certainly not, the attainment of puberty is not a sufficient indication of physical maturity to justify the consummation of marriage. I think two years at least after puberty a girl's physical development is considered to be enough to justify such cohabitation without injury to her own health and that of her progeny. In my opinion 16 years of age of a girl must be the minimum age to justify cohabitation.

10. A girl not less than 16 years of age would be competent to give an intelligent consent to cohabitation with a due realisation of consequences.

12. There is no doubt that early consummation and early maternity are responsible for high maternal and infantile mortality and are materially affecting the intellectual and physical progress of the people. Early marriage is a curse of the country and the public opinion has begun to realise that this practice is undermining vitality of the nation and must be stopped by legislation.

13. There is no doubt that there is further development of public opinion in this part of the country in favour of an extension of the age of consent in marital and extra-marital cases since the amendment of 1925. This public opinion prevails generally amongst the educated people who realize that early cohabitation is detrimental to the intellectual and physical progress of the people.

14. Generally education is prevailing amongst the women in this part of the country and they do not favour early consummation of marriage for their children.

15. I think in most of the cases no difficulty arises in determining the age of a girl as births are required to be registered according to law.

16. I will answer this question in affirmative.

17. I would separate extra-marital and marital offences. As regards extra-marital offence, I will place it in the definition of "rape", whereas in the case of marital offences, I will call it "illicit married intercourse". In the case of the former, five years' maximum imprisonment and in case of the latter two years' maximum will suffice.

20. I have already stated that fixing the minimum age of marriage would be much more effective than fixing a higher age of consent for marital cases. Public opinion in this part of the country would also support legislation in fixing the minimum age of marriage. By fixing the minimum age of marriage, we shall be stopping early cohabitation in marital relations. It has been already stated that it is very difficult to detect crimes of early consummation and early maternity.

21. I would rely on both the remedies. There is no doubt that education and social propaganda has been the cause of great and rapid progress in social reform but at the same time I consider that it is the duty of the Government to strengthen the penal law in order to protect the people from evil consequences of early consummation and early maternity. The Government has been pleased to stop evil practices on several occasions by passing necessary legislative enactments.

A recent instance of social reform by legislation is the rapid progress made by Turkey, in matters of this kind. Reliance on mere propaganda and evolution would not have succeeded in achieving in four decades what legislation has done within four years.

Written Statement, dated the 7th August 1928, of Mr. NUR BAKHSH, Pleader, Dera Ismail Khan.

1. I can't give complete answers to the questionnaire as the time at my disposal is very short. I would like, however, to make the following remarks on the subject. This opinion is exclusively my own, as I have had no opportunity of consulting any one else.

2. In this part of the country Muhammadan girls are generally married, when they have attained the age of 14 years. The girls, especially of the Zamindar class, are sufficiently mature at this age. I think it undesirable to postpone their marriage till they have completed the 16th year, as proposed by my learned friend R. S. Jhinda Ram.

2. Muhammadan Law presumes puberty in the case of girls when they have completed the 15th year. They then become *siajuris* and can contract themselves into marriage without the intervention of any male relation. 15 years is a safe standard, at which the age of consent should be fixed for the present.

3. Cohabitation by a husband with his wedded wife, who is pubert and of 14 years of age, should not be penalised.

4. Cohabitation by a husband with his wedded wife, who has not completed her 14th year, even though she may be pubert, should be legally prohibited. This would serve the purpose of our "reformers", and would put a stop to early marriages of girls before they are 14 years old.

5. As regards cases of rape, other than those between a married couple, the age of consent on the part of a girl should be raised to 15 years, instead of 14, as it stands at present.

6. In case of a contravention of law in the case of a married couple, the punishment should be fine only, extending up to Rs. 500 only.

7. Briefly I will recommend the following alteration in Section 375, I. P. C., as it stands at present:—

(a) In clause fifthly read "15" years instead of "14" years.

(b) In exception to the Section read 14 years instead of 13.

(c) In the latter case the punishment should be only of fine.

8. I am not prepared to give oral evidence before the Committee who has issued the questionnaire.

Written Statement, dated the 13th August 1928, of Lala JAI DYAL GADI, M.B.B.S., Assistant Surgeon, Dera Ismail Khan.

2. (1) I am against retaining the law as it is.

(2) I recommend raising the age of consent. The circumstances which justify this recommendation will be explained below.

4. (1) In this part of country the age at which the girls are married is rapidly getting high. Girls of 13 are being seldom seen married now.

5. About 14. It is a bit higher in girls living in villages.

9. (1) I do not consider that attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. In my opinion marriage should take place two years after the attainment of puberty. Conception can take place just after puberty has been attained but conception at this age leads to disastrous after-results. The cases of osteo-malacia are increasing day by day. Poor and deficient diet combined with the drain upon the under-developed system on account of pregnancy, delivery and lactation are its chief causes. Another cause is lack of sun-light. This naturally occurs because a girl having given birth to a child becomes so much overworked that she cannot move out even if she is not observing Purdah. The children of women suffering from osteo-malacia are rickety. Each successive pregnancy increases the trouble till pelvis becomes deformed causing obstruction in labour with serious consequences to the mother and child.

(2) Anæmias, of pregnancy, are on the increase. Women hardly reach full term. Miscarriage takes place. The child is dead. She dies too. If she lives—she is a chronic invalid.

(3) Phthisis is causing havoc in women. The cause is the weakening effect of rapid pregnancies and deliveries. There is no education about birth control here. I therefore consider 16 to be the proper age for marriage.

10. Sixteen years.

11. No cases have come to my notice.

12. I take early marriage and consequent early maternity as the most important causes of high maternal and infantile mortality. It is also the cause of the increase of the mentally and physically under-developed children—a great national loss.

14. The women in this part now do not insist on early consummation of marriage so much as they used to do before.

16. The margin of error in determination of age will be considerably reduced if the age of consent is raised from 14 to 16.

20. I think the legislation for fixing the minimum age of marriage will be conducive of better result.

21. Social propaganda aided by penal law will attain the object sooner.

Written Statement, dated the 13th August 1928, of Khan Mohammad AKBAR KHAN, B.A., District Judge, Bannu.

1. Yes. The present law is not considered satisfactory for reasons given below (para. 2).

2. The times have changed—with the advance of education and civilization in general a broad mental outlook has taken the place of the orthodox ideas and practices on this and other cognate subjects. There is much scope for improvement and social reform in this matter. The law as it stands at present, penalises only the intercourse of a man with his own wife below 18 and with any other woman below 14 years with her consent. No one can deny the proposition that at this age a girl can, in no case, be considered to have attained sufficient maturity of understanding or physical development or sex consciousness to be able to give a valid consent to an intercourse with her. After a careful consideration of the present law and the proposed amendment, I am of opinion that the provisions of the Bill in question are quite salutary and absolutely necessary from every point of view. The proposed age of consent, viz., 14 years for marital and 16 for extra-marital intercourse, is the minimum that could be fixed in the circumstances of the case. I also agree to the addition of section 376-A, to penalise the intercourse of a man with his own wife between 13 and 14 years of age, though naturally the punishment to be awarded should, as proposed, be lighter as compared with the offence of rape.

8. The crimes of seduction and rape are not very frequent but they are not uncommon in this part of the country. It is commonly known that a very small percentage of cases of rape or indecent assaults on women are reported or brought to courts. In a majority of cases the girl keeps the secret to herself for reasons of shame involved in the matter. In a few cases where the matter becomes known to the parents or the relatives of the girl the majority are hushed up by them for similar considerations. If a girl is bold enough to inform her parents and the parents are bold enough to report the matter to the police, it not infrequently happens that for lack of judicial proof the case is not chalanged and if the case happens to come before the court, the conviction cannot be sure. So the statistics of law courts cannot be a sure guide for forming an opinion as to the actual number of cases of rape and indecent assaults on women. The change effected in the law in the year 1925 has had a very salutary effect in general but the measure is not at all adequate.

4. Has been discussed in paragraph 3 above.

5. Between 15 and 16 years. Of course there is some difference in the case of well-to-do families and those persons who enjoy more out-door life than others.

6. Co-habitation with girls below puberty is not common except in the case of low classes, such as sweepers, etc. No such cases usually come to court.

7. No religious injunction exists in any community enjoining early consummation of marriage.

8. "Garbhadan" ceremony, so far as I know, is not performed in this part of the country.

9. In my opinion at the age of 16, which is the age of puberty, a girl has usually attained sufficient physical development to justify consummation without injury to her own health or that of her progeny.

10. 16 years.

11. I do not know of any particular case.

12. Yes. I am firmly of opinion that early consummation and early maternity are mainly responsible for physical deterioration of children and high maternal and infantile mortality.

13. Generally speaking, the educated community feels interested in the change in the age of consent, but apart from that there is no particular development of public opinion amongst the masses on this point.

14. No. Early marriages are not frequent in this part of the country.

15. Great difficulties are experienced by courts in arriving at a decision as regards the age of the girls concerned in cases under sections 375 and 376, Indian Penal Code. There can be only two alternatives either to go by the medical opinion or entries in the birth registers. In some cases entries in the birth registers are not forthcoming and even if forthcoming there are some discrepancies about the names of the children and their fathers. Medical opinion is never certain. The result is that the age of the girl cannot be definitely known. No special suggestions can be put forward to remove the difficulty experienced on this subject except that the importance of making the entries in birth registers in all cases should be brought home to the people.

16. There is some probability of the difficulties at present experienced in determining the age of girls in such cases being reduced if the age of consent is raised, as proposed, as physical development between the age of 14 and 16 is comparatively more marked than in tender years.

17. I have already given my opinion on this point in my answer to question No. 2. I think that an intercourse by a man with his own wife under 18 should be technically called "Rape" and it should fall in the same category as extra-marital intercourse with a girl under the age of 16 and that intercourse by a man with his own wife between 18 and 14 years of age need not be technically called rape but it should be penalised

by providing a separate section as proposed. I also agree with the terms of punishment proposed for each class of cases.

18. I have carefully noted the difference in procedure in the three classes of cases. I fully agree with the procedure, as proposed. I have no further suggestions to make on this point except that an offence under section 376 (A) be made compoundable by the wife with the permission of the Court.

19. The amended provisions now proposed with regard to cognisance by the police and bail, etc., as contained in Schedule II are adequate safeguards. No further safeguards are needed.

20. In my opinion both the Bills, viz., Sarda's Bill and Dr. 'Gour's Bill are absolutely necessary.

21. I am strongly of opinion that the removal of the defect sought to be removed by the Legislation in question by means of social reform and education is a doubtful, lengthy and inconvenient method of achieving the object in view. Legislation is the only sure and direct method.

Written Statement, dated the 13th August 1928, of K. S. GHULAM SARWAR KHAN, B.A., P.E.S., Personal Assistant to Director of Public Instruction, North-West Frontier Province.

With reference to copy of a Memorandum No. 3914-23-G. N./19/84-1928, dated the 1st August 1928, issued to the undersigned under Director of Public Instruction, North-West Frontier Province's endorsement No. 17242-62, dated the 9th August 1928, I have the honour to submit my answers to Questionnaire issued by the Age of Consent Committee, Simla:—

All the answers are based on the fact that Muslims, particularly the Afghans of the Frontier Province, generally marry at good ripe age. Early marriages are only rampant among Hindus.

Answers to Questions.

1. Yes.
2. Advance on the present law is necessary.
3. Crimes of seduction are not too common. Crimes of rape are very few and these in large towns.
4. Can be satisfactorily answered by lawyers and trying Courts.
5. This differs in different localities. Girls of this part of the province attain puberty at the age between 13 and 15 years.
- 6—8. No.
9. Yes.
10. Between 16-17 years.
11. This can best be answered by medical authorities.
12. Yes, certainly, as a main cause.
- 13—14. No.
15. At present "Birth and Death" Registers are kept carelessly in a Civil Surgeon's office and destroyed after 15 years. This destruction of such registers should be effected after 25 years.
16. See (15). Yes.
17. Severest possible punishment is desirable.
18. The girl's own statement may in such case be only relied upon.
19. No.
20. Latter alternative.
21. Latter alternative only.

Written Statement, dated the 13th August 1928, of Nawabzada Mohd. NASIR KHAN, District Judge, Dera Ismail Khan.

4. In my opinion the amendment of 1925, raising the age of consent within the marital state to 13 years, has not proved effective in protecting married girls against cohabitation with husbands within the prescribed age of limit. It has not succeeded in postponing the consummation of marriage or putting off marriage beyond 13 years. The reason is that cases of cohabitation by a husband with his wife are never detected. The state of society is such that it is very difficult for any girl to complain to the authorities against her husband, in respect of this act. She altogether depends for maintenance on her husband and would never like to take risk of starvation, if her husband is sent to jail. The relatives and friends of both the married couple would discourage the girl from seeking the help of authorities in this connection. They would not like to humiliate her by producing her in the court to bring the complaint. It is no wonder then that not a single case of rape, within marital state, has come up before the courts in this part of the country, as far as my experience goes.

There is no doubt that the public opinion against early cohabitation is permeating the people but this not an account of the legislation but on account of the social reform. The only step which I can suggest against early cohabitation is that early marriage should be stopped by legislation, as in that case there will arise no occasion for early cohabitation.

9. Certainly not; the attainment of puberty is not a sufficient indication of physical maturity to justify the consummation of marriage. I think 2 years at least after puberty, a girl's physical development is considered to be enough to justify such cohabitation without injury to her own health, and that of her progeny. In my opinion 16 years of age of a girl must be the minimum age to justify cohabitation.

10. A girl not less than 16 years of age would be competent to give an intelligent consent to cohabitation with a due realization of consequences.

12. There is no doubt that early consummation and early maternity are responsible for high maternal and infantile mortality and are materially affecting the intellectual and physical progress of the people. Early marriage is a curse of the country and the public opinion has begun to realize that this practice is under-mining vitality of the nation and must be stopped by legislation.

13. There is no doubt that there is further development of public opinion in this part of country in favour of an extension of the age of consent in marital and extra-marital cases since the amendment of 1925. This public opinion prevails generally amongst educated people, who realize that early cohabitation is detrimental to the intellectual and physical progress of the people.

14. Generally education is prevailing amongst the women in this part of the country and they do not favour early consummation of marriage for their children.

15. I think in most of the cases no difficulty arises in determining the age of a girl as births are required to be registered according to law.

16. I will answer this question in affirmative.

17. I would separate extra-marital and marital offences into different offences. As regards extra-marital offence, I will place it in the definition of "rape", whereas in the case of marital offences "I will call it illicit intercourse." In the case of former, 5 years' maximum imprisonment and in the case of the latter 2 years' maximum will suffice.

20. I have already stated that fixing the minimum age of carriage would be much more effective than fixing a higher age of consent for marital cases. Public opinion in this part of the country would also support legislation in fixing the minimum age of marriage. By fixing the minimum age of marriage, we shall be stopping early cohabitation in marital relations.

It has been already stated that it is very difficult to detect crimes of early cohabitation in case of married couples.

21. I would rely on both the remedies. There is no doubt that education and social propaganda have been the cause of great and rapid progress and social reform, but at the same time I consider that it is the duty of the Government to strengthen the Penal Law in order to protect the people from evil consequences of early consummation and early maternity. The Government has been pleased to stop evil practices on several occasions by passing necessary legislative enactments.

Letter, dated the 13th August 1928, from Mr. J. H. ADAM, O.B.E., I.P., Officiating Inspector-General of Police, North-West Frontier Province.

I have the honour to forward herewith replies to the Age of Consent Questionnaire by the undermentioned Police officers:—

- (1) All Superintendents of Police, North-West Frontier Province.
- (2) Officer-in-charge, Intelligence Branch, North-West Frontier Province.
- (3) Deputy Superintendent, Railway Police, North-West Frontier Province.
- (4) Commandant, Frontier Constabulary, North-West Frontier Province.
- (5) K. B. Rana Talia Mohammad Khan, District Officer, Frontier Constabulary, Oghi, District Hazara.

2. A summary of their views is also enclosed.

Replies to Questionnaire.

Replies have been given by the following officers:—

Peshawar District.—A committee consisting of—

K. S. Zahir Gul Khan, Deputy Superintendent of Police, Sadr,
K. S. Ghulam Sarwar, Deputy Superintendent of Police (Prosecution),
Inspector, Abdul Qadir,
Inspector, Qasin Ali Shah,
Inspector, Kanhaya Lal,
Sub-Inspector, Sahib Singh,

met on two days and after full discussion gave replies to the questionnaire.

Kohat—

Mr. W. D. V. Slessor, M.A., Superintendent of Police, and
K. S. Obedulla Khan, Deputy Superintendent of Police.

Bannu—

K. S. Malik Muzaffar Khan, Deputy Superintendent of Police.
Faiz Talab Khan, Officiating Deputy Superintendent of Police.

Dera Ismail Khan—

F. H. Du Heaume, Esq., Superintendent of Police.
K. S. Gul Mast Khan, Officiating Deputy Superintendent of Police.

Hazara—

E. R. Taylor, Esq., Superintendent of Police.

Railway Police—

K. S. Akbar Ali Khan, Deputy Superintendent of Police.

Intelligence Branch—

K. S. Abdul Aziz Khan, Deputy Superintendent of Police.

(The Officer-in-charge, Intelligence Branch, has nothing to add.)

The following summary indicates briefly the views of those officers who have replied:—

1. According to all but 2 replies, no dissatisfaction with the state of the law as to the age of consent as contained in sections 375 and 376, Indian Penal Code, has come to notice. The Deputy Superintendent of Police, Kohat, differs and Deputy Superintendent, Railway Police, merely says that the age should be raised to 16 years.

Several replies indicate that although there is no popular expression of dissatisfaction a raising of the age of consent would be welcome, especially amongst the more educated classes.

2. Opinion is divided. Several officers are in favour of an advance (a) because a young girl does not realise her liabilities, or (b) because the temptations and inclinations towards rape would be reduced or (c) because it would be in the moral and eugenic welfare of the people.

The Peshawar committee say that Pathan sentiment is against any limit in ex-marital cases as it interferes with the right of their supervision over their girls. If, however, a limit is necessary it may be up to 18 years.

3. *Vide* statistics attached.

No particular effect has been felt since the 1925 amendment (Deputy Superintendent of Police, Kohat, differs).

Legislation to discourage traffic in women is suggested by the Peshawar committee, and Superintendent of Police, Hazara.

4. Few, if any, cases within the marital state have come to notice.

The legislation to discourage traffic in women (paragraph 3) is the action suggested by the Peshawar committee.

5. Girls attain puberty between 12 and 14 years generally.

Girls of good social status reach puberty earlier than those of poorer classes.

6. Cohabitation usually takes place soon after puberty. Cases very seldom, if ever, come into court.

In this province Mohammedan girls usually marry soon after attaining puberty and cohabitation starts almost at once. As the consent of the parents is given cases do not come into court.

7. No actual religious injunctions, but see Peshawar and Dera Ismail Khan replies.

8. Unknown.

9. Practically all replies regard attainment of puberty as insufficient indication of physical maturity to justify consummation of marriage.

Superintendent of Police, Dera Ismail Khan, Deputy Superintendent of Police, Kohat, and Deputy Superintendent of Police, Bannu, suggest 2 years after puberty as a suitable time for consummation without injury to the wife or her progeny, whilst Deputy Superintendent of Police, Railway Police, and Deputy Superintendent of Police, Lakki, suggest the age of 16 years and Superintendent of Police, Kohat, the age of 19. The Peshawar committee are of opinion that consummation immediately after puberty undoubtedly has bad effects but suggest no particular age or interval after puberty as being sufficient to justify innocuous consummation.

10. The Peshawar committee think that at no particular age is a girl competent to give intelligent consent to cohabitation but only when she is fully educated and made to understand the consequence of cohabitation.

12 years is mentioned by Deputy Superintendent of Police, Railway Police, 14 by the Assistant, Intelligence Branch, and Deputy Superintendent of Police, Bannu, 16 by Superintendent of Police, Dera Ismail Khan, and Deputy Superintendent of Police, Lakki, and 18 by Superintendent of Police, Kohat, whilst the Deputy Superintendent of Police, Kohat, is alone suggesting puberty as the time when a girl is competent to give her consent.

11. Most of the replies state that cases of injury to girls or their progeny caused by too early cohabitation have come to notice, but no details are given. The Peshawar committee attribute some cases of consumption and of weak second or third children to this cause.

12. Most officers consider that early consummation and early maternity are responsible for high maternal and infantile mortality but the Peshawar committee think that ignorance, poverty, want of proper nursing and nourishment are the real causes.

13. The Peshawar committee say that there is no public opinion and Superintendent of Police, Dera Ismail Khan, says that public opinion is not voiced. On the other hand, the Deputy Superintendents of Police, Railway Police and Lakki, report the development of a limited public opinion in favour of further changes and Deputy Superintendent of Police, Kohat, agrees only as far as extra-marital offences are concerned.

Assistant, Intelligence Branch, thinks insufficient time has passed since the 1925 amendments.

14. The Peshawar committee explain that in certain social circles the marriage contract is arranged between the mothers at an early period and that when the girl attains puberty the parents of the boy are compelled to have the marriage consummated.

Only Superintendent of Police, Dera Ismail Khan, and Deputy Superintendent of Police, Bannu, say that mothers favour early consummation. Deputy Superintendent of Police, Railway Police, agrees as far as Hindus are concerned.

15. The Peshawar committee and Deputy Superintendent of Police, Railway Police, report that difficulties have been experienced in determining the age of girls, but most of the other replies disagree.

The difficulties would be minimised by a better system of registration of births including children's names. (Peshawar, Assistant, Intelligence Branch, Railway Police and Kohat).

16. The majority think that difficulties regarding determination of age would be minimised if the age of consent is raised to 14 years or above, but the Peshawar committee emphasize that a margin of error must remain.

Deputy Superintendent of Police, Kohat, is of opinion that the difficulties would be increased in the case of married parties as more cases would come into court and the public would resent the consequences.

17. The Peshawar, Dera Ismail Khan and Bannu replies favour the separating of marital offences and suggest for such offences sentences varying from 2 years and fine to the punishment now provided by section 376, Indian Penal Code. The Peshawar committee's view is that cohabitation by a man with his legally married wife must not be called rape.

Superintendent of Police, Dera Ismail Khan, would reduce the punishment for extra-marital offences under the age of 13 years from transportation to 4 or 5 years.

Deputy Superintendent of Police, Kohat, favours the existing laws but suggests 5 years and fine for marital offences if the wife is over 9 but under 12 or 13.

18. The Peshawar committee regard the present procedure as suitable but recommend that offences of rape committed within the marital state be tried in camera. Male doctors should not examine girls. Indecent questions not to be put without the permission of the court. Marital cases to be compoundable.

Deputy Superintendent of Police, Kohat, also suggests that marital cases be compoundable if the wife is over 9 years of age.

19. The only safeguards suggested are (a) that the investigating officer should be of the rank of Sub-Inspector working under a gazetted officer's supervision (Peshawar) or of Inspector (Dera Ismail Khan), and (b) that a minimum age for marriage be fixed rather than a higher rate of consent (Assistant Intelligence Branch).

20. A higher age of consent (rather than a higher minimum age for marriage) would be more in consonance with public opinion according to the Peshawar, Dera Ismail Khan, Bannu, Railway Police, and Kohat (Superintendent of Police) replies, but the second alternative would, in the opinion of Superintendent of Police, Dera Ismail Khan, and Assistant Intelligence Branch, be more effective. Deputy Superintendent of Police, Kohat, thinks that no legislation would be effective in his part of the country.

Superintendent of Police, Dera Ismail Khan, mentions the inability of the poorer classes to protect their daughters at the dangerous age or to support them longer than absolutely necessary.

21. The Peshawar committee favour the education of the public by social propaganda combined with legislation prohibiting the sale of girls in marriage. The same view is held by the Superintendent of Police, Dera Ismail Khan, except that he would like to see social reform backed by gradual and progressive strengthening of the penal law as such reform takes effect. Superintendent of Police, Dera Ismail Khan, would rely on both methods whilst his Deputy prefers social reforms by means of education and social propaganda. The Deputy Superintendents of Police, Railway Police, Bannu and Lakki, favour the strengthening of the penal law, the reason given by the last-named being that social reform "would take ages".

Written Statement, dated the 9th August 1928, of the Committee consisting of (1) K. S. ZAHIR GUL KHAN, D.S.P., (2) K. S. GHULAM SARWAR KHAN, D.S.P., (3) Inspector ABDUL QADIR, (4) Inspector QASAM ALI SHAH, (5) Inspector KANHAYA LALL, (6) Sub-Inspector SAHIB SINGH, sent by the Senior Superintendent of Police, Peshawar, to the Inspector General of Police, North-West Frontier Province, Nathlagali.

1. Yes; there does exist dissatisfaction to certain extent, the reasons for which will be given below:

2. (1) The law in marital cases should not be retained in this part of country, which is mostly populated by muslims, and where marriages are performed according to the laws of Islam. In the laws of Islam the limit of the age of consent in marital cases has not been fixed in number of years. Whatever limit fixed for giving such consent according to Islam is the age of attaining puberty.

(2) The age of consent should be further raised in extra-marital cases, as this procedure lays great restrictions on the temptations and inclinations towards the commission of rape. j

3. Not frequent. The raising of the age of consent has greatly affected in reducing crime outside the marital state, and would be still more effective, if my suggestion in paragraph 2 (2) is carried out.

4. Not in this part of the country, where the age limit of marriage is considered the age after attaining puberty. No steps are required to make it effective, as the custom prevalent here is already thoroughly effective, and in very rare cases have such complaints been made against the husbands.

5. The usual age of the girl's attaining puberty here is fourteen years. It however does differ in many cases. The poor and labour class girls

usually attain puberty after the age of 14 years, i.e., at 15, or 16 years' age, while the rich class girls being better nourished and well looked after attain puberty usually before the age of 14 years, in few cases even at the age of 9 years.

6. (1) No.

(2) Yes.

(3) There is no consideration of the number of years, but the consideration is given here to the age of attaining puberty in its real sense, whatever may be the age of the girl in number of years.

Very few cases do come to court in this part of country of the cohabitation before puberty, or say before the girl completes 13 years, while more cases come to court of the cohabitation after puberty.

7. The practice of the early consummation of marriage before puberty in this part of country is common amongst Hindus and *vice versa* amongst muslims. There is however no injunction in Hinduism and Islam penalising the breach of practice. The matter of the consummation of marriages is absolutely optional in both religions. One can legally marry at any age, say in the case of minors the consent will be considered valid if given by the lawful guardians of the pair. Of course the question of cohabitation if left to nature I mean to the natural tendency of the parties. Both the laws and especially Islam is quiet on the subject as far as my knowledge is concerned.

8. No.

9. Yes, but having regard to the girl's physical development I would like the consummation of her marriage be postponed at least two years after she attains puberty, however, I am against the idea of fixing a common age limit for the consummation of marriages, as the ages of attaining puberty differ from each other as mentioned in paragraph 5.

10. At the age when a girl reaches puberty whatever may be her age in number of years.

11. A few such cases specially of cohabitation before puberty have come across my notice, but I regret to be unable to give details of age and injury sustained.

12. Yes, it does affect to a great extent.

13. Not at all in marital cases for reasons given in paragraph 2 (1) while on the other hand in extra-marital cases the public opinion in general has greatly developed in favour of the extension of the age of consent for reasons given in paragraph 2 (2).

14. Not before the age of attaining puberty amongst muslims.

15. No difficulties have been experienced in either case, that is to say rapes in marital state are not often committed here as mentioned in paragraph 4, while in extra-marital cases the situation has rather improved by raising the age of consent as mentioned in paragraph 3.

16. In marital cases the difficulty would be rather increased if the age of consent is further raised, as in the course of time more cases would automatically come to court, and the public would gradually resent the consequences.

In extra-marital cases, the difficulty which is still being felt by the public to some extent as mentioned in paragraph 1 will further be reduced, if the age of consent is further raised as suggested in paragraph 2 (2).

17. I am in favour of the existing laws in both cases and do not like to suggest amendments in punishments of either case except that of the sexual intercourse with one's wife under 12 or 13 years or the age of attaining puberty, which I think should be limited to a sentence of 5 years and fine only instead of the sentence fixed for it at present.

At the same time I would suggest that the punishment of the existing law must hold good when the sexual intercourse is committed with one's wife under the age of nine years instead of 12 or 13 years.

18. I would like to make a difference in the procedure of trials for offences within the marital state only and would suggest that the offences be considered as compoundable with the exception of one described in paragraph 17 (B).

19. No.

20. No penal legislation fixing any limit of the age of consent for marital cases would be ever effective in this part of country as I have already mentioned in paragraph 4 that the age limit of marriages generally considered here is that of attaining puberty without the least consideration towards the number of years.

21. The strengthening of the penal law in this respect is absolutely unnecessary here or I should say is likely to stir up the feelings of the public for reasons of coming under restrictions against their abiding by the common practice or laws of religion I would rather prefer to rely on the progress of social reform by means of education and social propaganda.

Letter No. 3214, dated the 9th August 1928, from Mr. G. G. JAMESON, Superintendent of Police, Bannu, to the Inspector-General of Police, North-West Frontier Province, Nathlagali.

I have the honour to refer to your memorandum No. 763-72/C., dated the 2nd August, 1928, and enclosures. I attach herewith the replies to the questionnaire of Khan Sahib Malik Muzaffar Khan and Khan Faiz Talab Khan, Deputy Superintendents of Police of Lakki and Sadar, Bannu, respectively, duly certified. A statement, containing the statistics asked for in paragraph 2 of your letter, is also attached.

POLICE DEPARTMENT.

BANNU DISTRICT.

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Statistics of Cases under Section 376 I. P. C. during the last 10 years.

1.	2	3	4	5	6	7	8	9	10
Serial No.	Name of Thana.	No. of F.I.R. and date.	Offence.	Name of complainant.	Age of complainant.	Name of accused.	Age of accused.	Particulars.	Result of case.
1	Mirian	13. 11th Feb. 1918.	376	Mst. Madi Khela	27	Gulabat	28	The complainant was a married woman. She was grazing camels in the fields. The accused raped her.	The accused was sentenced to 9 months R. I. on a Jirga finding by order of D. C. of 1st May 1918.
2	City Bannu	76. 8th Dec. 1918.	376	„ Bakht Bhari	23	Thakur Dass	28	The accused pursued the woman to go to his house to have it white-washed and replied her.	The accused was sentenced to 8 years R. I. by order of A. C., dated 23rd December 1918.
3	Mirian	26. 12th April 1919.	376-511	„ Gul Sherina.	12	Isam Shah	20	The complainant was out grazing her cattle. The accused caught and attempted to ravish her.	3 years R. I. by order of A. D. M., Bannu, dated 16th May 1919, also a fine of Rs. 50.
4	Dadiwala	13. 6th May 1919.	376	„ Zar Bibi	19	Sharbat	40	The complainant was going to bring water. The accused caught her and committed rape with her.	5 years R. I. by order of A. D. M., dated 26th May 1919.

5	City Bannu	15, 24th Feb. 1920.	376	" Bhag Bhari.	13 { Maula Bux Damodar Das	45 } 32 }	Mat. Bhag Bhari was the wife of Maula Bux, who had sold her to Damodar Das and the latter raped her.	Both accused were sentenced to 5 years R. I. each by order of D. C., Bannu, dated 19th April 1920.
6	Do.	39, 16th April 1920.	376	" Begama	11 Guli Khan	23	The complainant was the wife of the accused, who raped her.	3 years R. I. by order of District Magistrate, dated 28th May 1920.
7	Sedar	106, 11th July 1920.	376-511	" Mehr Jana	11 Mir Alam Khan	20	The complainant had gone out to graze her cattle. She was caught by accused who attempted to rape her.	14 Years R. I. on 30th July 1920.
8	Ahmadzai.	178, 18th Dec. 1921.	376-511	" Bahhtawar	20 Gul Bat	30	The complainant was a pawinda woman. She had gone out to graze her camels when the accused a Sepoy of the Frontier Constabulary, attempted to rape her.	Accused discharged on 21st January 1922.
9	Do.	85, 20th Sep. 1922.	376-511	" Sadozai	15 { Mir Ahmad Danlat Khan	27 } 24 }	The complainant was going home with her mother. Two Sepoys of the Frontier Constabulary caught the complainant and attempted to rape her.	Both accused sentenced to suffer five years R. I. each on 24th November 1922.
10	Sedar	23, 3rd Mar. 1923.	376-511	" Mehr Gula	26 A British Sergt.	26	The complainant had gone to labour in the Commissariat lines. The accused asked her to clean his tent. She who caught by the accused was attempted to ravish her.	The complainant having been withdrawn, the accused was acquitted.

Statistics of Cases under Section 376 I. P. C. during the last 10 years—contd.

1	2	3	4	5	6	7	8	9	10
Serial No.	Name of Thana.	No. of F. I. R. and date.	Offence.	Name of complainant.	Age of complainant.	Name of accused.	Age of accused.	Particulars.	Result of case.
11	Sadar	31, 13th Mar. 1923.	376-511	Mst. Media	12	Tara Chand	38	The accused caught the complainant outside the Hawed Gate, Bannu City, and made an attempt to rape her.	Accused discharged on 31st May 1923.
12	Lakki	9, 10th Feb. 1924.	376 {	" Mehr Jana . " Zulekha .	9 10	Manlu . Jallu .	12 } 15 }	The complainants had gone out to the fields. The accused caught them each and raped them.	Manlu sentenced to 12 stripes and Jallu to 9 stripes on 24th March 1924.
13	Choriwala.	22, 17th June 1924.	376	" Hukmi	9	Abu Khan	23	The complainant was walking in a garden. The accused caught her and raped her.	4 years R. I. on 15th July 1924.
14	Railway, Bannu.	26, 19th Sep. 1924.	376	" Bakhtawari.	21	Gulam Mohd.	26	Both the complainant and the accused were travelling in the same train. At the Thanadar Wala Railway Station the accused raped her.	4 years R. I. on 3rd December 1924.
15	Sadar	26, 15th Mar. 1925.	376	" Asal Mans	19	.....	...	The complainant was grazing her sheep. The offenders raped her. The offenders remained untraced.	Case filed as untraced on 16th May 1925.

91	Ghoriwala.	48, 18th June 1925.	376-511	„ K h a n a m Jana	11	Wali Mohd.	30	The complainant had gone to the shop of the accused to buy sugar. The accused caught her and attempted to rape her in his shop.	1 year R. L. on 24th June 1925.
17	Sadar	39, 21st Mar. 1926.	376-511	„ Basmira	8	Wazir Khan	25	The complainant was cutting grass in the fields. The accused attempted to rape her in the wheat crops.	4 years R. L. on 6th May 1926.
18	City Bannu	34, 7th April 1926.	376-511	„ Bhagwanti	9 { Mithu Ram Bihari Lal	28 } 30 }	The complainant was raising by the house of accused 1 when she was caught and taken inside the house, where accused 1 and 2 attempted to rape her.	4 years R. L. each on 20th June 1926.	
19	Lakki	39, 12th June 1926.	376	„ Mai Khola	45	Mir Badesbah	16	The complainant was watching her melon fields. The accused caught her and raped her.	Discharged on 24th June 1926.
20	Ghoriwala.	111, 20th Sept. 1927.	376	„ Besham Jana	11	Mir Shab Jahan	25	The complainant was cutting grass in the fields. The accused raped her.	3 years R. L. on 19th March 1928.

G. G. JAMESON,

Superintendent of Police, Bunn.

(ALB.)

Replies, dated the 9th August 1928, of K. S. MALIK MUZAFFAR KHAN, Deputy Superintendent of Police, Lakwi-Marwat, Bannu, to the Questionnaire.

1. There is no dissatisfaction in this part of the country.
2. Retaining the law as it is as making an advance will not make any difference in this part of the country.
3. Very few rape cases. Usually the girls consent and do not give any chance for a rape case. There are of course frequent cases of kidnapping, which have their own age limits.
4. I have not come across such a case and probably there has been none in this part.
5. Thirteen years; no difference among castes.
6. Yes, but cases do not come to Court.
- 7—8. No.
9. No. At the age of 15, a girl of this part of the country is fit to be married, but personally I would recommend the age of 16.
10. Eighteen years or 16 years, in some cases.
11. I have not come across such a case, as generally the Zemindar classes do not marry very young.
12. Yes, as we always hear of such cases from towns and cities.
13. The educated and sensible classes, are in favour of the law, but the peasant classes generally do not know it.
- 14—15. No.
16. Yes.
- 17—18. Not necessarily.
19. None.
20. Yes. The former.
21. I prefer the former, as the latter would take ages.

Replies, dated the 9th August 1928, of Khan FAIZ TALAB KHAN, Deputy Superintendent of Police, Sadar, Bannu.

1. None.
2. I am in favour of the retention of the age of consent as it is.
3. Crimes of seduction and rape are not frequent in this part of the country.
4. Yes.
5. Between 13 and 14 years. Among the rich people, the age of attaining puberty is generally earlier than among the poorer classes.
6. The people of this part of the country generally care more for boys than for girls, therefore no exact opinion can be given as regards girls, but, generally speaking, cohabitation takes place when the girl completes at least 13 years. Very few cases come to Court.
7. The practice of the early consummation of marriage before or at puberty exists among the Hindus to a great extent. I am unaware of any religious injunction on the point in Hindu Law. Under the Mohomedan Law there is no restriction of age for marriage, but the girl has a right to refuse to marry on attaining puberty.
8. No.
9. I consider that at least 2 years should elapse after puberty before a girl is sufficiently developed physically to justify consummation without injury to her own health and to that of her progeny.
10. Fourteen years.

11. No special case can be quoted.
12. Yes, I do.
13. There has been no further development of public opinion in this part of the country in favour of the extension of the age of consent.
14. Yes.
15. No.
16. Yes.
17. Yes. Maximum punishment for extra-marital offences should be ten years and fine, while for marital offences the punishment should be one-fifth of the above suggested sentences.
18. Not necessarily.
19. None.
20. The former.
21. Penal law will serve the purpose.

Written Statement, dated the 8th August 1928, of Mr. F. H. DuHEAUME, Superintendent of Police, Dera Ismail Khan, sent to the Inspector General of Police, North-West Frontier Province, Nathiagali.

With reference to your No. 763-72/C, dated the 2nd August 1928, I have the honour to report as follows:—During the past 10 years no case has been reported in which a girl under the age of 14 has been ravished with her so-called consent. Similarly, no case has come to the notice of the Police in which a husband was prosecuted for rape against his wife, being under 13 years of age, since 1925, or under 12 years of age for the eight years preceding 1925.

As the age of consent does not therefore come into the question in any case reported in this District during the last 10 years, the statistics given in the attached list refer only to cases of rape by force.

I have discussed the questionnaire with Deputy Superintendent of Police, Tank (K. S. Gulmast Khan) and our replies are submitted herewith.

1. As stated above, no case has been reported which would have been affected by the age of consent. It is, nevertheless, generally recognised that the age of consent should be legally raised, although no popular expression of this view has been made.

2. It is maintained that the average girl of 14 does not realise the extent to which her consent commits her, and that she cannot realize fully her liabilities before she attains the age of sixteen years.

3. Crimes of seduction and rape are of unfrequent occurrence in this district. What have occurred have been unaffected by the amendment of law made in 1925, as the question of consent has never entered into these cases.

4. No such cases have come to light.

5. 12 to 13 years. Slightly earlier among Hindus and also among village people.

6. It is the general rule among Mohomedans to marry a girl soon after she has attained puberty, and cohabitation starts almost at once. As the consent of the parents is given to this, no cases ever come to court.

7. No actual religious injunction, although the Prophet himself set the example by marrying a girl who "was still playing with toys".

8. Unknown.

9. No. It is suggested that sufficient maturity is reached 2 years after puberty to enable a girl to bear children without injury to herself or her progeny.

10. At sixteen.

11. The greater number of deaths in child-birth are undoubtedly due to the early consummation of marriage.

12. See No. 11. Low intellectual and physical standard is undoubtedly due to the same cause.

13. Public opinion on the subject is not usually voiced, and little interest is evinced in the legal aspect of the case.

14. Yes. Both parents are equally keen on getting their daughters married early, as they look forward to being grandparents.

15. No difficulties have been experienced. In cases of doubt, the age, as estimated by a medical authority, is accepted in court.

16. No.

17. Yes. Extra-marital offences are likely to be accompanied by more cruelty, and are also much more of a danger to society. It is suggested that the proposed punishment of 2 years is suitable for an offence between the ages of 13 and 14 years, but that the proposed punishment of transportation is too drastic for offences under the age of 13 years, and should be reduced to 4 or 5 years. In this connection please see No. 20, which explains certain circumstances in which it may be necessary for marriage to take place before the age of legal consummation. In such circumstances the temptation should be recognised and allowed for. With the spread of education, this punishment might be increased later.

18. The proposed amended procedure is concurred in.

19. No. Its retention is non-cognizable, and the present instance of Police investigation, where necessary, being carried out by an Inspector or superior officer, should be sufficient.

20. Legislation fixing the minimum age of marriage would undoubtedly be more effective, but public opinion is generally against this, and in favour of fixing the higher age of consent in marital cases. The reasons chiefly put forward are:—

- (i) the inability of the poorer working classes to support their girls longer than absolutely necessary,
- (ii) the inability of the same classes to protect their girls at the dangerous age (13-14) owing to their absence at work, etc.,
- (iii) general relief felt by all classes in getting their girls safely off their hands.

21. Social reform, backed by gradual and progressive strengthening of the penal law, as such reform takes effect.

D. I. Khan District.

The statistics of prosecutions and convictions for the last 10 years under Section 376 I. P. C. are as follows:—

	Prosecutions.	Convictions.	Acquitted or Discharged.
1917	2	1	1
1918	2	2	—
1919	1	1	—
1920	1	1	—
1921	4	3	1
1922	3	2	1
1923	5	4	1
1924	3	—	3
1925	3	2	1
1926	2	2	—
1927	3	3	—

**Written Statement of Mr. ANWAR ALI, Deputy Superintendent,
Railway Police, North-West Frontier Province.**

1. Yes, the age of consent as contained in Sections 375 and 376 I. P. C. should be raised to 16 years.

2. A girl at the present age of consent being merely a child is hardly able to understand the consequences of marriage at this time nor she has any knowledge of the welfare of children. An advance on the present law therefore seems necessary.

3. Not above the average.

4. No such cases have come to light.

5. The usual age at which girls attain puberty in this part of country is between 13 and 14 years. It differs in different classes, girls of poorer classes not being able to get proper nourishment result generally in attaining puberty after the above age whereas the richer classes attain puberty at 12/13 years of age.

6. Cohabitation generally is not common in this part of the country among any classes before puberty but it takes place after puberty. No such cases to my knowledge have come to Court.

7. No.

8. Gaona or Garbhadhan ceremony is not performed in this part of the country.

9. No, the attainment of puberty is not a sufficient indication of physical maturity for marriage, at the age of 16 years a girl can be considered, as regards physical development to be enough to justify consummation of marriage without injury to her own health, etc.

10. A girl at 16 years of age in India would, in my opinion, be competent to give an intelligent consent to cohabitation with a due realisation of consequences.

11. Several instances have come to notice in which before attaining full physical development before or after puberty cohabitation has resulted in injury to health or body of girls and in certain cases in the loss of children.

12. Yes, the early marriage and early maternity are no doubt responsible for high maternal and infantile mortality and for other serious results arising on this account.

13. Yes. Most of the educated public are in favour of an extension of the age of consent.

14. Mohomedan women in this part of the country are not generally in favour of the early consummation of marriage for their children while most of the Hindu women are in favour of this.

15. Yes; in certain cases punctual registration of births would remove the difficulty.

16. Yes; it is considered that the difficulty in determining the age would be reduced if the age of consent is raised.

17—19. No answer.

20. In my opinion legislation fixing a higher age of consent for marital cases would likely be more effective than legislation fixing the minimum age of marriage, the former would be in consonance with the public opinion in this part of the country.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view.

Note, dated the 7th August 1928, regarding Age of Consent by Mr. ANWAR ALI, Deputy Superintendent in charge of Railway Police, North-West Frontier Province, Peshawar.

The last amendment was made in 1925 and sufficient time has not gone by for public opinion to develop on the merits of the question which is one of rare consideration as of infrequent occurrence. Extremely rare are prosecutions for marital offences which rightly form the subject of special trials but light punishments. The bigger question is of early consummation of marriage which people favour for their children. There is however no religious injunction to which this practice may legitimately be attributed. It is more prevalent among the Hindus. Mr. Sadra's Bill provides sufficient remedy against this custom. When this Bill is passed into law there will be no necessity separately to provide for what are now called marital offences but which seldom come to courts. Fixing the minimum age of marriage as this Bill does is practically more effective preventive of marital cases than the fixing of a higher age of consent. This leaves no necessity to provide against collusion to protect the offender and takes away chances of improper prosecution and extortion. "Fourteen" is the proper age of consent in this country. Registration of births should be regularised to avoid difficulties that usually arise in this matter. The rest should be left to progress of social reform. There is no dissatisfaction with the existing state of law but the reforms mentioned above would be welcome.

Written Statement, dated the 10th August 1928, of the Superintendent of Police (Mr. W. D. V. SLESSER, I.J.), Kohat, to the Inspector-General of Police, Nathiagali.

With reference to your No. 763-72/C, dated the 2nd August 1928, I have the honour to forward herewith the replies of K. S. Obedullah Khan, Deputy Superintendent of Police, to the questionnaire attached therewith.

A statement showing all the cases under Section 376 I. P. C. with their disposal for the period of 10 years from 1918 to 1927 is submitted herewith as required.

Personally I am in entire sympathy with Sir Hari Singh Gour's Bill, and my opinion on certain paragraphs of the questionnaire is as follows:—

2. (2) The moral and eugenic welfare of the people.
3. Crimes of seduction and rape are common in this District.
6. (2) Common soon after puberty.
9. No. About 19 years of age.
10. Not under 18.
12. Yes, for high infantile mortality and for other harmful results affecting the stamina of the race.
15. Yes. A better system of registration of births is required.
20. I advocate penal legislation fixing a higher age of consent. I think also that it would be more in consonance with public opinion than fixing the minimum age of marriage.
21. To rely on both.

POLICE DEPARTMENT, KOHAT DISTRICT.

Statement showing the crime under section 376 I. P. C. of last 10 years, from 1918 to 1927.

Serial No.	Years.	CASES.						PERSONS.			REMARKS.
		Reported.	Cancelled.	Sentenced.	Discharged.	Untraced.	Pending.	Arrested.	Sentenced.	Discharged.	
1	1918 . .	5	3	2	...	...	...	4	2	2	
2	1919 . .	4	3	..	1	...	...	2	...	2	
3	1920 . .	3	...	3	...	...	...	4	4	...	
4	1921 . .	3	...	1	2	...	...	5	3	2	
5	1922 . .	6	1	5	...	...	...	5	5	...	
6	1923 . .	12	8	3	...	1	...	7	3	4	
7	1924 . .	6	2	3	1	...	...	8	5	3	
8	1925 . .	6	...	3	...	2	1	4	3	1	
9	1926 . .	11	2	6	3	...	...	14	6	8	
10	1927 . .	7	...	2	5	...	...	6	4	2	
11	Total . .	63	19	26	12	3	1	59	35	24	

NOTE.—There has been no case of rape by husband with his wife.

Replies of a Committee formed to consider the Questionnaire.

We the members of the Committee assembled two days and considered the queries given in the attached questionnaire. We submit our report as follows:—

1. The general public being ignorant, there is no dissatisfaction regarding the age of consent as contained in Sections 375 and 376.

2. As regards consent outside the marital state Pathan sentiment is against any limit as this interferes with the right of their supervision over their girls. However if a limit is necessary it may be up to 18 years.

3. No particular effect has been felt.

No case within the marital state has come to light, and as regards cases of seduction and rape outside the marital state, the code of honour of the Pathan is a sufficient safeguard. Statistics of murders due to sexual relations will explain our meaning. There is a bad custom of selling girls. This extends to all classes of the public. Parents achieve their object in getting money in various ways. Poor parents sell their girls like cattle at any age. Similarly men of position dispose of their girls in lieu of gratification of one sort or another at any time and as they please. It is in the suppression of this custom of purchase and sale of girls that the real remedy of suppressing crimes against women lies.

4. As stated above there is no case within the marital state brought to notice and proceeded with. The remedy is suggested in item No. 3.

5. The girls attain puberty between 12 and 14 years of age generally according to the status of the parents. Girls brought in well-to-do circles reach puberty earlier than those living in poor circumstances.

6. Girls in this part of the country are usually kept under strict control. The whole social circle in which they are living is held responsible for their purity. The strong measures inculcated by the Pathan Code of honour to avenge any breach of the sanctity has a more powerful influence over the mind of the girls and youths who risk their lives, if they cohabit with a girl (1) before puberty, (2) after puberty, (3) at any age.

Very few cases of rape are reported. They are concealed and revenge taken. This results in murders, riots, etc.

7. Among the Muslims of this country there is no such doctrine in force. The parents are free to get their girls married to any one at any time before puberty. After puberty the consent of girl is necessary. Marriages before puberty are based on the principle of Mohomedan law which is taken from the act of the Holy Prophet, who married a girl before puberty. Among the Muslims here consummation of marriage before puberty is very rare, but when met with, the cause is to be found either in close relationship between the consenting parties or in the poverty of the girl's parents, who sell their daughters to the highest bidder.

Among the Hindus the practice is based on religious injunctions. It is ordained by the Hindu laws that they should get their girls married before the age of puberty and consummation of marriage is allowed after puberty.

8. Nothing is known of this ceremony in this district.

9. It mainly depends on the constitution of the girl and her environments. Attainment to puberty is a natural declaration that the girl is fit for cohabitation, but the effect of consummation of marriage on the girl immediately after puberty would certainly produce a bad effect on the physical development of her progeny. Consequently the girl herself will lose much in physique by giving birth to a child in her tender age.

10. At no age, but when she is fully educated and made to understand the consequences of cohabitation.

11. Instances have come to our notice in which girls subjected to cohabitation before puberty have died. At the same time there are other

instances in which girls of poor physique have given birth to children and have afterwards become consumptive. Their children are always weak and in some cases distortion of limbs is the result. The mother of a child does not necessarily sustain injury after the first birth. In some cases mothers have been injured after the second or third birth, the children being of poor physique.

12. Maternal or infantile mortality may be due to early maturity and consummation, but the people's ignorance is the real cause. Poverty, want of proper nursing, and nourishment are the real causes of high mortality amongst infants and mothers.

13. As stated already there is no public opinion in this part of the country.

14. In very rare circumstances do parents resort to early consummation of marriages for their children. Women alone are not responsible. For instance when the contract is effected between the mothers at an early period, and the girl attains puberty the parents of the boy are compelled to have the marriage consummated. This is restricted to certain social circles.

15. Yes. The difficulties in ascertaining the exact age of girls is always felt. This seems to be due to the improper registration of births and deaths. The births and deaths are reported but the names of children are not given in the first instance. If the registering authorities are instructed to ascertain the names of the children properly, the difficulty can be obviated. The registration of births and deaths must also be properly carried out.

16. We cannot say how far the difficulty of determining the age would be reduced by raising the age of consent. Certain indications may lead an observer to express his opinion regarding the age of a girl before him, but it would be very difficult for that observer to come to the right conclusion. The margin of error will always remain.

17. Yes. We are inclined to think that cohabitation of a husband with his legally married wife must not be called rape. The punishment provided by the present Section 376 I. P. C. is considered suitable.

18. The procedure laid down in C. P. C. regarding trial of offences within the marital state is quite appropriate. Offences of rape committed within the marital state should be tried in camera. The examination of the girl must never be made by a male doctor. Indecent questions must not be allowed to be put by the prosecution without permission of the Court. Marital cases should be made compoundable.

19. Investigation of rape offences may be conducted under the direct supervision of a gazetted police officer, or by an officer not below the rank of a Sub-Inspector.

20. The first alternative is in consonance with public opinion of this part of the country.

21. To gain the object in view it is far better to educate the public by social propaganda. But side by side with this a penal law should be introduced prohibiting sale of the girls in marriages. This would be a means of drawing attention to the propaganda that may be embarked upon.

Replies by the Commandant, Frontier Constabulary, to the Questionnaire issued by the Age of Consent Committee.

1. In this outlying portion of the Indian Empire, i.e., the Hazara border, people generally take no interest in such measures of reform. The

very few educated people show dissatisfaction with the present age of consent when the subject is discussed.

2. An advance on the present law is required because it will be welcomed by educated classes of practically all communities.

3. As far as such crimes come to light they do not appear to be very frequent in this part of the country. The effect of the 1925 amendment cannot be judged when no comparative statements of such crimes can be made available here.

4. Marriages below the age of consent, i.e., below 13 years, are not frequent in these parts. Cases of cohabitation below the age of consent very seldom come to light. The girl cannot possibly complain to her people and even if rape was committed by the husband, it is very seldom and then only when some very serious injury has been caused that recourse is had to a court of law.

Marriages very seldom take place now before the age of 18 amongst boys and 13 to 14 amongst girls and public opinion is gradually inclining against early marriages.

5. About 13/14 years. This depends on climate. In very hot climates they attain puberty before that age. The attainment of this age depends on other circumstances of health and good living too.

6. Not common before the age of 13. Very few cases come to court.

7. No. The vast majority of people are Muhammadans and they constitute about 97 per cent. of the population. The very few Hindus living in villages are much influenced by social customs prevailing round them and early marriages are practically non-existent.

8. No. It is unknown in these parts.

9. The attainment of puberty is not sufficient indication of physical maturity to justify consummation of marriage. Three to four years after puberty, the physical development will be enough to justify consummation of marriage without any injury to the girl's health or that of her progeny.

10. 14 to 16 years.

11. I can't recall details off hand of such cases. Such cases seldom come to court. It is however an open secret that failing health of the young mother and her offsprings which is so generally noticeable all round is in no small measure due to such cohabitation.

12. There may be other contributory causes too but early consummation of marriage and early maternity is mainly responsible for high maternal and infantile mortality. It has also been affecting adversely the intellectual and physical progress of the people.

13. Excepting amongst the "intelligentsia" (who are very few in these parts) there appears to have been not much development of public opinion in this direction.

14. Yes, they do. But this is based mainly on the old idea of celebrating happy occasions during one's lifetime.

15. Great difficulties are often experienced in determining disputed ages. Improved and better registration will minimise such difficulties.

16. To be answered by Doctors.

17—18. Yes. The proposed amendments to Penal provisions and procedure will serve the purpose very well.

19. No.

20. Penal legislation fixing the minimum age of marriage would be more effective than the other and will be more in consonance with public opinion in these parts.

21. Social reform by means of education and propaganda would, in enlightened and civilized countries that are not handicapped by divergent

conditions, social, religious and climatic, like India, be preferable. In India however penal legislation should come first and an awakening amongst vast illiterate masses would naturally follow.

NOTE.—I have been out of touch with criminal conditions in districts especially with regard to points under discussion for some time now and cannot say much about the effect produced by the amendment made in 1927.

**Written Statement, dated the 9th August 1928, of Mr. E. R. TAYLOR,
Superintendent of Police, Hazara.**

With reference to your Memo. No. 763-72-C, dated 2nd August 1928, I have the honour to forward herewith the statistics of cases registered under Section 376, I. P. C., during the last 10 years. I regret that in most cases it has not been found possible to give the age of the complainant because some Police Files have been destroyed and insufficient time has been given for the perusal of Judicial Files.

In most of the cases where no age has been entered it may be surmised that the complainant was a fully grown person and not under the age of fourteen.

With reference to the questionnaires attached with your letter my answers to paragraphs Nos. 1, 2, 3, 4, 6, 7 and 8 are as follows:

1. There is no dissatisfaction with the state of the law as regards the age of consent as contained in Sections 375 and 376, I. P. C., but amongst the educated classes an advance in the ages would be welcomed.

2. An advance on the present law would be justified in this district. Instances of marriage with a girl under the age of fourteen are rare in the district both amongst Hindus and Mohamnadans.

2. An advance on the present law would be justified in this district. Mohammanadan rural population. The usual motive of rape in this district is a sudden impulse to lust. The amendment of the law in 1925 has made no difference to this. Many girls are believed to be exported from this district to the brothels of the Punjab for immoral purposes and more severe legislation against this traffic would be welcome. At present it is most difficult to deal with these cases when the woman is of immoral character and more or less consents to the idea.

4. It is not a usual custom in this district to marry girls under the age of 13 although cases have been heard of.

6. No.

7. Not in this district. When, if ever it occurs amongst the peasantry it is usually on account of poverty of the parents who wish to get their daughter off their hands and married to a man who will pay them some money.

This custom is not practised in this district.

Serial No.	Year.	P. S. and case No.	Complainant.	Age.	Accused.	Place of occurrence.	Result.
1	1918	Torbela . 35	Begum Ji, wife of Sedar Shawani.	...	...	Mohat .	Cancelled on 31st March 1919.
2	Do.	Haripur . 17	Babu Jan . . .	...	.....	Jaba .	Cancelled on 25th April 1919.
3	1919	Sherwan . 7	Name of the girl not known.	...	Gulzaman . . .	Gadda .	Accused sentenced to 15 stripes or three months' rigorous imprisonment on 20th March 1919.
4	Do.	Ghazi . 13	Name of girl not known	...	Sherbahadur, 22 years	Kala Khatha	Accused acquitted.
5	Do.	Khanpur 31	Isha Bibi, wife of Makhan Shah.	...	Dadu, son of Labu, 18-19 years.	Kheri Nara .	Filed as untraced.
6	Do.	Belakot 18	Mattuba, wife of Asmatullah.	...	Asiz, son of Ibrahim, 25 years.	Manur .	Three years' rigorous imprisonment, including three months' solitary confinement.
7	1920	Garhi-Haibulla 8	Khanam Nur, wife of Feroze.	...	Gulzaman, 25 years	Khangwali .	Accused discharged.
8	Do.	Shinkhari 83	Khanam Nur, wife of Abas.	...	Aslam Khan, suspected .	Sachha .	Cancelled.
9	Do.	Cantt . 44	Fasal Nur, wife of Qedar Bux.	...	Mira . . .	Kakul .	Do.
10	Do.	Haripur 65	Akhumadi, widow . .	...	Ghafer and others .	Haripur .	Do.
11	1921	Sedar . 16	Chano, wife of Sharaf Din	...	Khadi, 20 years . .	Ghora .	The case proved to be under section 497, hence cancelled.

12	1922	Haripur	18	Bani, wife of Nadar	...	Khana and Ahmaddin	Dingi	Accused convicted and sentenced to two years' rigorous imprisonment each under section F. C. R.
13	Do.	Khanpur	6	Sarwar Jan	10 years.	Sherzaman, 25 years	...	Under F. C. R., accused ordered to pay Rs. 250 as compensation to the husband of the girl.
14	Do.	Sadar	21	Sahib Nur, wife of Mir-Abdulla	...	Gulam Jalani, 25 years	Sarainiamat Khan.	Cancelled.
15	Do.	Mansehra	6	Niqab Nur, wife of Munsafar Shah.	...	Mahmuds, 18 years and Ghani, 17 years.	Ganda	Both sentenced to four years' rigorous imprisonment each, including three months' solitary confinement and Rs. 200 fine each.
16	Do.	Mansehra	13	Zewri, wife of Bahadur	...	Dand, 25 years and Mas Khanullah, 26 years.	Trangri	Both acquitted on appeal.
17	Do.	Khanpur	11	Taj, sister of Faqir Khan	...	Aliakbar, 26 years	Chamba	Accused sentenced to seven years' rigorous imprisonment and a fine of Rs. 100.
18	Do.	Sadar	56	Khanam Jan, wife of Abdul Hassan.	...	Jumma, Haider and Hayat	Salhad	All the three accused sentenced to five years' rigorous imprisonment each.
19	Do.	Haripur	47	Rahmat Jan, daughter of Nura.	11-12 years.	Karam Khan, 32 years	Muradabad	Sentenced to seven years' rigorous imprisonment.
20	Do.	Shinkhari	48	Nojmul-nissa, daughter of Amir Khan.	...	Ali Khan, 20 years	Hathimaira	Sentenced to 15 stripes.
21	Do.	Nara	14	Amirjan, wife of Kala	...	Wali Mohammad Khan	Dubran	Cancelled.
22	Do.	Haripur	70	Jani, daughter of Bala	...	Sher Ahmad, 22 years	Saraisaleh	Accused sentenced to two years' rigorous imprisonment.

Serial No.	Year.	P. S. and case No.	Complainant.	Age.	Accused.	Place of occurrence.	Result.
23	1923	Khanpur 5	Mufto, daughter of Kala.	12-13 years.	Khanizaman, 15-16 years and Qulla, 22 years.	...	Khanizaman sentenced to eight stripes. The other to 15 stripes and two years' rigorous imprisonment.
24	Do	Haripur 33	Gabo, daughter of Qaimali	...	Abdul Bahaman, 20 years	...	Sentenced to rigorous imprisonment and a fine of Rs. 200.
25	Do.	Sadar	Hindo, wife of Sher-Zaman.	...	Sada Beg, 35 years. Umar Din, 25 years. Mian, 22 years	...	Cancelled.
26	Do.	Mansehra 29	Kasam Jan, daughter of Amirullah.	...	Samundar, 50 years.	...	Sentenced to three years' rigorous imprisonment.
27	Do.	Sadar 17	Karam Jan, daughter of Ghufara.	...	Sher, 25 years.	...	Sentenced to two years' rigorous imprisonment and a fine of Rs. 100.
28	Do.	Sadar 72	Khanam Jan, daughter of Khan Mohd.	89 years.	Mohammad, 35 years	...	Sentenced to five years' rigorous imprisonment including three months' solitary imprisonment.
29	Do.	Ghazi 15	Amir Jan, daughter of Akbar.	...	Nuran Shah, 15 years	...	Sentenced to four years' rigorous imprisonment
30	Do.	Sadar 72	Bekhtnur, wife of Faqir Mohd.	...	Ghulam Mohammad, 25 years.	...	Cancelled.

31	1924	Shinkari	11	Wahab Ji, wife of Mir Abdulla.	11-12 years.	.....	Do.	...	Sentenced to five years' rigorous imprisonment.
32	Do.	Sherwan	5	Mir Jan, wife of Mir Abdulla.	...	.....	Do.	...	Cancelled.
33	Do.	Bakot	.	Sakib Ji, daughter of Manga.	8-10 years.	Niazil 25 years	...	...	Sentenced to five years' rigorous imprisonment.
34	Do.	Gathi	10	Hassan Jan, wife of Man sarali.	...	Haider, 25 years	...	...	Cancelled.
35	Do.	Mansehra	43	Gulo, daughter of Feroz	...	Sain, 32 years	...	...	Sentenced to five years' rigorous imprisonment including two months' solitary imprisonment.
36	Do.	Nara	23	Jani, wife of Kaisa	...	.....	Cancelled.	...	Cancelled.
37	Do.	Khanpur	43	Karam Nishan, daughter of Faqir.	...	Allahditta, 45 years	...	...	Sentenced to four years' rigorous imprisonment including three months' solitary confinement.
38	Do.	Torbela	18	Charn, daughter of Azi-mullah.	12 years.	Latif, 22 years	...	...	Sentenced to four years' rigorous imprisonment and a fine of Rs. 200.
39	1925	Khanpur	5	Khate, wife of Ghulam Mohd.	..	.....	Cancelled.	...	Cancelled.
40	Do.	Sherwan	4	Nadri, wife of Mans	...	Gal Zaman	...	...	Sentenced by Jirga to rigorous imprisonment for three years each.
						Saiz Ahmed	...	...
						Hadatullah	...	...

Serial No.	Year.	P. S. and case No.	Complainant.	Age.	Accused.	Place of occurrence.	Result.
41	1925	Shinkhari 36	Mahbi, daughter of Faqir	...	Gulla, 26 years Mohammad Ali, 21 years.	...	Sentenced to five years' rigorous imprisonment and Rs. 100 fine each, including three months' solitary confinement each and 20 stripes each.
42	Do.	Shinkhari 39	Khadi, wife of Mir A'am	...	Khawas, 25 years	...	Cancelled.
43	Do.	Mansehra 32	Atbar Jan	...	.....	...	Do.
44	Do.	Haripur 73	Piari, daughter of Fazal	...	Karam Chaud, 19 years	...	Sentenced to three years' rigorous imprisonment and a fine of Rs. 10.
45	Do.	Cantt 64	Amir Jan, widow	...	Fazal Din, 25 years Abdul Latif, 25 years Mir Mohammad, 25 years	...	Mir Mohammed, three years' rigorous imprisonment including one month's solitary confinement, Fazal Din, two years' rigorous imprisonment and Abdul Latif, one years' rigorous imprisonment.
46	Do.	Shinkhari 51	Gobar Nishan, wife of Azad.	...	Abdul Rahman, 40 years	...	Cancelled.
47	Do.	Haripur 6	Feroze Jan, wife of Abdul Aziz.	...	Mohammad Bux, 32 years	...	Sentenced to two years' rigorous imprisonment and a fine of Rs. 80; on appeal sentence of imprisonment reduced to already undergone, fine remained intact. Charge was changed to 354, Indian Penal Code.

45	1926	Shinkari	37	Gobindi, wife of Kishan Singh.	...	Umar, 35 years	..	Accused discharged under section 233, Criminal Procedure Code.
46	Do.	Nara	17	Amir Jan, wife of Faqir	..	.....	..	Cancelled.
50	Do.	Sadar	23	Rahmat Nur, daughter of Abdulla.	..	.....	..	Do.
51	Do.	Haripur	41	Kali Jan, wife of Karam Illahi.	..	Fazal Illahi, 36 years	..	Do.
52	Do.	Sadar	68	Qalandar Jan, wife of Kala Khan.	Adult	Ghulam Mohammad, 45 years.	..	Case proved to be of 497, Indian Penal Code, hence cancelled.
53	Do.	Haripur	.	Begam Jan, wife of Fazal Ali.	..	.....	..	Cancelled.
54	Do.	Torbela	13	Abi-Nur, wife of Imam Din.	..	Prem Chand, 19-20 years.	..	Do.
55	Do.	Mansehra	42	Hayati, daughter of Jumna.	12-13 years.	Samundar, 18 years	..	Sentenced to four years' rigorous imprisonment.
56	1927	Haripur	109	Sahib Jan, wife of Suleman.	18-19 years.	Bhagat Ram, 19-20 years.	..	Cancelled.
57	Do.	Balakot	22	Mapo, daughter of Baij wali.	11 years.	Bahadur, 28 years	..	Sentenced to three years' rigorous imprisonment.
58	Do.	Haripur	143	Hussain Jan, daughter of Fir Khan.	14-15 years.	Ram Chand, 22 years	..	Sentenced to two years' rigorous imprisonment.

E. E. TAYLOR,
Superintendent of Police, Hazara.

Written Statement, dated the 14th September 1928, of SETH LADHA RAM, Banker and Municipal Commissioner, Kohat.

1. No, the retention of the existing law with regard to the age of consent as contained in Sections 375 and 376 of I. P. C. is absolutely essential to keep order in society. Here it is all the more necessary keeping in consideration the turbulent nature of the people and their criminal mentality. I believe, there is not the least dissatisfaction with the present law, but on the contrary any weakening of it would lead to increase in crimes of this nature in the N.-W. F. P.

2. On account of the following circumstances retain the law of age of consent as it is:—

(1) In this part of country as the girls generally get maturity at fourteen years so there is great danger of the girls falling from morality, if they are made to wait for marriage up to the age of sixteen years. In some villages there are only one or two houses of Hindus in which case they will have to face a still worse fate.

3. Police records are the best means of supplying this information.

4. The amendment had no special effect. The people have been going on with the marriages as before the enactment of this law. The girls are generally married at the age of thirteen or fourteen years.

5. Girls generally attain puberty at fourteen in all communities.

6. No I don't know.

7. Yes. Kindly refer to Mantras 6, 7, 8 of Adhaya 7 and Mantra 24 of Adhaya 1 or Prashar Smriti.

8. No such ceremony is performed in this Province.

9. Yes.

10. At the age of thirteen or fourteen.

11. No.

12. No. I attributable generally such mortality to the carelessness on the part of family members who are required to look after such cases. The people are illiterate and do not know the health rules, moreover no regular trained Dais are obtainable in this part of country.

13. No further development of public opinion in this Province.

14. Yes. But marriages in our part of country generally take place at a mature age.

15. Yes. Difficulties have many times arisen but expert medical opinion is sufficient to dispel such difficulties. I suggest in case of Hindu girls Janam Patries and Tevas if produced in support of age may be relied upon.

16. No. I do not think so. The error in determining the age can be made at all ages of individuals.

17. No. I do not propose any alterations in the maximum of the punishment of these offences.

18. I cannot suggest in this respect.

19. No suggestion.

20. Legislation fixing minimum age of marriage would be in consonance with public opinion in my part of country.

21. I would prefer the social reforms by means of education and social propaganda and I am glad to note that the Hindu Religious societies have already taken up this question in their programme.

Written Statement, dated the 14th August 1928, of Dr. ABDUL SAMAD KHAN, M.B., B.S., Assistant Surgeon, Egerton Hospital, Peshawar.

1. Yes.

2. (b) The present Law relating to the age of consent is inadequate. Taking into consideration the peculiar customs of this province specially the Parda system the age of fourteen years is not the age when a girl is mentally fit to differentiate between good and bad.

3. Seduction is much more prevalent in this part of the country. Yes. The people are gradually becoming aware of the law and hence take much care about the age in committing the offence of this sort, specially in cases of seduction. The raising of age limit has reduced to a great extent the crimes of this nature.

4. In this part of the country the child marriage is not common. The girls are married when they attain puberty which is at the age of fourteen years.

5. Fourteen years. The girls which are brought up in rich circumstances attain puberty earlier than of poor classes.

6. In this part of the country cohabitation is done after puberty because of the healthy influence of Islam. Never. At least no case has come to my notice as a Medico Legal Man.

7. Not much aware of this. The religion here is Islam and therefore there is no such injunction.

8. No such ceremony is performed in this province.

9. No. Puberty generally does not mean sufficient mental development because for attaining puberty many other circumstances such as climate, good living, social condition have influence.

10. About six years.

11. During my professional experience of seven years I have come across certain cases in which girls were married immediately after attaining puberty, the result being that either the girl got tuberculosis or the issues from her died of tuberculosis.

12. Yes. To some extent Parda system is also responsible for such high maternal and infantile mortality.

13. Public is in favour of the extension of the age of consent.

14. No. They are becoming more sensible.

15. Yes. The present birth register system of this part of the country is not sufficient to determine the exact age. This system should be improved, so that people may have easy access for registration and some penalty for failure should be imposed. The name of the child should also be given in the register. Medical opinion about age is never positive and hence seldom helps.

16. No. It will be just the same.

17. Yes. There ought to be some difference between Extra Marital and Marital offence. The punishment for the Marital offence should be lesser than for the Extra-Marital.

18. Legal question. Not in a position to answer.

19—20. Legal question.

21. Both.

**Written Statement, dated the 14th August 1928, of Mr. ALLAH DIN,
District Inspector of Schools, Hazara District, North-West Frontier
Province.**

1. No particular dissatisfaction exists with the state of the law as to the age of consent—yet there are social enthusiasts who are anxious to discourage child marriage and sexual intercourse with girls under perfectly mature age.

2. Both views have their own advocates.

- (1) Those in favour of retaining the present law assert that marriage is almost a religious institution, and people should be free to contract marriages at the earliest possible of the life. This view, is, however, losing ground, and the Hindu community which is specially adhered to child marriage, is now the foremost class in denouncing child marriages. But it cannot be safely advocated that the desire for such a change is universal and very intense. Yet there exists the desire in a very tangible form for the ideal.

Among the Muhammadans there are persons who, in theory, do not desire any change on the pretext that religion does not place any restrictions upon child marriage; so legislature should not interfere. But in practice they follow the other view. Being poor they marry at a late stage and so would not be affected if the present law is not retained.

(2) Advance on the present law is necessitated by the fact that—

(1) Parental control has weakened over the family and unless law affords protections, the family life is every day threatened to be ruined.

(2) Sexual intercourse, married or otherwise with girls under perfectly mature age, has very adversely affected the health and constitution of the nation. It is extremely necessary that people should be compelled to respect certain limits of age in sexual intercourse.

(3) Advance on the present law would also give the people opportunities to add something to the wealth of the country. As responsibility to bring forth and maintain children will be adjourned for a year or so, in the meantime parties will be able to earn something for themselves.

3. Crimes of seduction or rape are not very frequent. Rape is almost extinct—but crimes of seduction do happen off and on. The amendment of 1925 has greatly strengthened the hands of parents and has appreciably reduced the crime in this direction. But still an effort is needed in the matter and a little rise in the age of consent is necessitated by the force of circumstances and especially in the case of improper seduction of girls for immoral purposes, law stands in need of being stiffened.

4. Yes—the amendment of 1925 has produced the desired effect.

5. According to the material circumstances of the family—the age of puberty varies from 11-16. In hot climates the age of puberty is less than that in cold climates, and in rich classes the age of puberty begins earlier.

6. In lower grades of society cohabitation, detailed in the question, is not uncommon—but it is very seldom that the matter comes to the court.

7. No—I cannot ascribe it to religious injunction—on the other hand it is the ignorance of religion which is responsible for such a state of affairs.

8. I am not aware of any such a ceremony in my ilaqa.

9. Attainment of puberty is itself not a sufficient indication of physical maturity to justify consummation of marriage. In my opinion a period of 3 to 5 years must elapse before consummation should be allowed.

10. Between 18 and 22 years.
11. I cannot quote instances but it is a matter of common knowledge that consummation of marriage with a girl before she has attained full physical development, has resulted in ruining her physical capacity to produce children.
12. Early consummation and early maternity with *poor boarding and lodging* and still *poorer medical* comforts are responsible for high maternal and infantile mortality as well as other results vitally affecting the intellectual and physical progress of the people.
13. No—further development of public opinion exists here.
14. No—rather they do not favour it. If they are married in early life they cannot help consummation of marriage.
15. Difficulties do exist and could be removed—
 - (1) if marriages are duly registered,
 - (2) and child births are duly and punctually registered,
 - (3) vaccination is properly attended and records properly maintained,
 - (4) people should be made to realise the necessity of keeping family registers wherein they duly enter births and deaths of the family members.
16. It will not affect the present situation either way.
17. It is a point of law I regret I cannot express my opinion on it.
- 18—19. It is a point of law I regret I cannot express my opinion on it.
20. I think the minimum age of the marriage should be fixed rather than the higher age of consent. But it does not mean that the age of consent should not be raised or fixed.
21. On both. Both are essential.

Written Statement, dated the 14th August 1928, of Mir KARIM BAKHSH, P.E.S., Inspector of Vernacular Education, North-West Frontier Province, Abbottabad.

1. Yes, the public in general (and the educated portion of it more specially) are dissatisfied with the existing state of the law as to the age of consent as enacted in Sections 375 and 376 of the Indian Penal Code. I have 25 years' experience in the North-West Frontier Province and have had ample chance of gauging public opinion on such questions. My belief is that the public is in favour of an increase in the age of consent.

2. As I have already stated I am in favour of making an advance on the present law, and I agree with the public opinion in this part of the country, that the age of consent should be raised still more. The following circumstances justify this opinion:—

- (a) The public opinion is in favour of an advance and public opinion in social matters like that should be respected.
- (b) The educational condition of the country in general and the present condition of female education and female intellect in India specially go very far to show that a girl of 14 years is incapable of giving a free and considered consent to sexual intercourse with a full realization of the consequences.
- (c) I know of several cases of intentional mis-carriage and infanticide, based on ideas of shame and fear of public scandal, resulting from inconsiderate consent given by young girls. Such cases are considerably frequent and cannot be ignored.
- (d) The children from premature intercourse, marital or otherwise, are weaklings in majority of cases and the high rate of infant mortality in India is mainly due to that fact.

- (e) The parda system and the total lack of open-air-exercise are responsible for the general debility in females and it is therefore absolutely necessary that cases of premature motherhood should be reduced to the unavoidable minimum. Child birth is in many cases a message of death to the young mothers.

3. Seduction cases are very frequent in this part of the country, but simple rape cases are not very frequent. Rape cases come to light only when the offence is committed without consent. Cases of rape with consent never come to courts in this Province, as far as my knowledge goes. The amendment of the law made in 1925 raising the age of consent to 14 years has, as far as I know, not succeeded in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes. The reason is that cases of seduction with consent are very leniently treated by the courts and exemplary punishments are not awarded. In my opinion more severe punishment should be provided for in these cases. There is one more point to be considered here. The seduced girls while under the roof of the offender and under his influence are, in many cases, won over by him and therefore when brought before the courts, the seduced girls try their best to save the criminal. Several cases go unpunished for this reason. I think provisions should be made to keep the seduced girl (after her recovery from the seducer) in impartial custody for a considerable time before her statement is recorded by the court. This will provide opportunity to bring the seduced girl to a state of free mind and considered opinion.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years has not been effective in protecting married girls against cohabitation with husbands within the prescribed age limit in any way. As far as I am aware not a single case of rape (within the marital state) has ever come to courts in this Province. The amended law remains as ineffective as it was before. The public opinion in India in these matters is not strong and forceful enough to be able to mend things. It is only legislation that can do something to improve matters. As far as I can see there is no possibility of giving life to the dead letter of the law as it is in the present state except by prohibiting marriages till a certain age limit. There is no effective way of bringing the marital cases of rape to courts and even if strong measures are taken in this connection there is every danger of undesirable consequences to ensue. On the other hand the public opinion is ripe enough to welcome any legislation prohibiting marriages within a certain age. When a marriage once takes place it is very difficult or rather impossible to secure the consummation of it to any considerable period.

Child birth can only be the practical method of bringing to light premature consummation, but this does not happen in many cases. I would suggest very severe punishment in cases of this kind if they come to courts. Without child birth there is no possibility of discovering premature consummation of marriage. Any efforts in this connection are liable to bring about serious results.

5. The age of puberty in this part of the country is on an average 15 years. The age differs in different classes of society. As far as my knowledge and information goes, girls in rich families attain puberty earlier than the girls of poorer families. The same is the difference between the girls living in cities and the girls living in villages. Much depends upon food, the climate and the social status in each case.

6. Cohabitation before puberty, soon after puberty, and before the girl completes 13 years is sufficiently common in this Province, in the majority of classes of people. The system of early marriages so very common in Hindu families is responsible to this state of affairs to a great extent. But such cases are not very rare even in Mussalmans.

As I have already submitted marital cases of rape never come to courts and the non-marital cases when they come into courts are not sufficiently punished.

7. In Mussalmans there is absolutely no religious injunction responsible for early marriages or early consummations of marriage. The Mussalmans in this country have adopted this evil practice in some cases under Hindu influence. Many of the customs now prevailing amongst Mussalmans are taken from Hindu law (in their original or amended form) and are contrary to the dictates of Mussalman law.

As far as I know there is no such religious injunction even in Hindu law. Certain Hindu law commentators have, of course, expressed opinion in favour of early marriages, but I do not think they have the force of law (strictly speaking) in the proper sense of the word. A Hindu gentleman only, it is true, can authoritatively state the case in this connection, but as far as I have been able to gather from Hindu gentlemen, with whom I have talked on this matter, I am sure, the opinions of these commentators can very safely be ignored, at least in this part of the country.

8. I do not know anything about Gaona or Garbhadhan ceremony and am therefore unable to say anything about it.

9. In my opinion attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. In my opinion consummation of marriage should be postponed for a full year after puberty and should not be allowed till the girl attains the age of sixteen years. Any earlier consummation is liable to cause injury to the health of the girl and her progeny.

10. For reasons already stated I am of the opinion that a girl in India would be competent to give an intelligent consent to cohabitation with due realization of consequences at the age of sixteen and not earlier.

11. I know of several cases in which cohabitation before puberty or before full physical development of a girl resulted in serious consequences. In a majority of cases the children were mere weaklings. In several cases the mothers do not survive child birth. Such children die in large numbers and even if they live they have very weak constitution. Such like cases are very frequent in cases of consummation of marriage before 14 years and frequent enough to justify interference by the legislature, before 16 years. In several cases the mothers get consumptive soon after child birth and the children contract the disease also.

12. I have already stated that early consummation and early maternity are responsible for the high rate of mortality in mothers and babies. I have also stated that the general debility caused by early motherhood is mainly responsible for the increase of consumption in this country. This tells very badly on the general physical and mental progress of the people in this country.

13. This question has also been answered already. The general public and more specially the intelligentsia of this Province (North-West Frontier Province) are in favour of a further advance in the law and the age limit should (and could safely) be raised to sixteen years.

14. Early marriages are common in certain classes but I do not think the women in this part of the country favour early consummation of marriages for their children. Of course exceptions can be had in cases of very ignorant people. But I am sure there would not be any unrest or dissatisfaction at all, if the legislature takes a step further.

15. It is always very difficult to determine the age of a person when the question arises in courts. This difficulty is also experienced in majority of cases under Sections 375 and 376 of the Indian Penal Code. The reason is potent. Though births are registered in the Police stations through the Chaudikars of the villages and also in the Municipal offices in Municipal Towns, the name of the child is never given. There is a column in the register (name, if the baby is named) but the babies are not named till after a week or two in Mussalmans and till after the expiry of a greater period in Hindus. The result is that where the birth is registered in a couple of days after the birth, the name-column remains vacant for all times to come. Now when a copy of an entry from the birth register is

produced, it is impossible to determine whether the entry applies to the girl in question or some elder or younger sister of her. The opinion of the medical expert on the question of age is also very inconclusive. A medical witness always wavers in his opinion and cannot at all swear that the person whose age he has given approximately cannot be younger or older by two years or so.

In my opinion the only and the most convenient and conclusive way of overcoming this difficulty is to provide for the filling up of the name column in the birth register. Those who keep these registers should be directed to see that the name column in the register is filled up when the baby is named. The chaukidars go to the Police station once in every week and it would not cost any body any thing if this provision is made.

16. In view of my suggestion given in the above paragraph, I would say that there would not be any such difficulty if the suggestion is taken up. I am also of the opinion that the margin of error would surely be minimised if the age of consent is raised. There will be less cases of erring on the working side any how.

17. I am not in favour of separating extra-marital and marital offences. It should be one and the same offence with the same punishment. The punishment already provided by the law is sufficient. The courts will have of course to exercise their discretion in the award of punishment and if under the circumstances of a particular case a marital offence deserves leniency in punishment, the courts, of course, could show leniency.

18. In my opinion marital offences should only be tried by the Court of Sessions, on a commitment by the District Magistrate.

19. In my opinion there is no necessity of any further safeguard if the procedure suggested in the above paragraph is adopted.

20. I have already stated that if the legislature wants to do anything effective, it should fix the minimum age of marriage. Penal legislation has so far remained a dead letter practically and there is no very great hope of its utility even in the future. The public opinion in my part of the country would rather have the minimum age of marriage fixed.

21. Education and social propaganda could not, in my opinion, be able to mend matters to any considerable extent. This method would be very slow but no one can say that it would be very steady as well. In the present state of India's social and educational development, such methods of social reform cannot be said to be very effective. Legislation is an absolute necessity in this connection.

Written Statement, dated the 15th August 1928, of Mr. CHUHAR LAL, President, Arya Samaj, Abbottabad, Hazara.

I am in receipt of your Circular letter on the question of the age of consent, dated 31st July 1928. I am enclosing the answers to the questionnaire in which my Samaj agrees with me.

1. Educated opinion in this District has not much force. Among the orthodox hardly any dissatisfaction exists. The cases of the breach of law, except where force is employed, are very rare.

2. Marriage generally takes place when the girl is above 14. In cases where it is performed below 16, cohabitation does take place at 14 or above. A change to 16 will not prevent this but it will prove useful as an educative measure, influencing people indirectly.

3. The cases of seduction are frequent, not of rape. I do not suppose the change of the law has had any perceptible effect on life in villages or towns. The law can be made more effective by measures adopted to make the Bench and the Bar an efficient part of the social organism. At present they are not. There is nothing in common between them and the people. They never mix together.

4. The amendment of law seldom becomes known to the people, except as a matter of news when it appears in the public press.—Even then it receives little attention compared to other sensational news which the press circulate. The Government Gazettes are not subscribed by the members of the public nor even by the members of the Bar.

The steps proposed are that the Legislators, the Law Dispensers, and the Law Practitioners should become a part and parcel of the village and town life of the country. For this their Non-Hindu, Non-Muslim, Non-Sikh education and instincts disqualify them entirely. Private efforts to bring them together have failed. It is for the Government now to initiate them in every District. The beginning must be made in Government houses and Council Halls to meet people at places, which suit them, where more familiar and more useful meetings can take place. Parties at Government Houses, Meetings arranged by Ministers in their Offices or Clubs, as at Lahore, have not succeeded.

5. The usual age is 14 or 15. In castes and communities, habituated to a sedentary and luxurious life, the time is accelerated but only in towns.

6. Cohabitation before puberty is not common. It is common soon after puberty. There is seldom any waiting after that period. Cohabitation before the girl completes 13 is very rare. The Society's influence is checking this. Cases do come to Court and when they do their indirect educative influence reaches all classes.

7. In this District religious injunctions have little force. The Hindu population is in a great minority. The Shastric Law has lost its force. The Arya Samaj are succeeding in explaining the truer law.

8. This ceremony is unknown. It used to be known as *Muklara*, but as early marriages are exceptions the marriage and the *Muklara*, take place at one and the same time.

9. The attainment of puberty is not a sufficient indication of physical maturity. It only marks beginning of that stage. The age fixed, according to the old law, at one time current in the country, was lowest 16. But as the conditions of health are suffering, there is no supply of proper food for the body or mind, the law following the conditions of the country, must fix a higher age. The health of wives, who become early mothers and produce a large number of children, suffers, so also that of their children.

10. The girls in India do not receive any education on this subject, nor do their husbands and parents. The Universities have not included marriage and its duties in their courses of Instruction, or Examinations. A Graduate may receive the highest honours and yet he or she will not know what a marriage and a married life means, how maternity and child-welfare can be best served. No girl can give an intelligent consent to cohabitation with a due realization of consequences. They generally know how to avoid them.

11. There are lot of cases, which, in our experience as a body with Doctors, Hakims and Veids in it, we have come across. Cohabitation has in those cases resulted in injury to the woman's health, to her body and her progeny. The wives have become permanent invalids, subject to the attacks of all sorts of germs, so also their children.

Abbottabad provides an occasion for the study of this question. Every year, on account of the cheapness and easy approach of this hill station families are drawn from the Punjab and North West Frontier Province, with cases of Tuberculosis and other wasting diseases, without any adequate provision made for their proper accommodation and treatment. A Sanitarium of a cheaper nature, with medicinal trees, plants and roots, helping healthier atmosphere, helping the patient and the attendants, served by the Sadhu and the Vaid and Hakim, helped also by the Medical man and social worker, could be easily arranged. More satisfactory arrangements for the best food could be also made.

12. Yes, but they are the symptoms of the real disease of the body politic of the country. The high maternal and infantile mortality and other results vitally affecting the intellectual or physical progress of the people referred to in the question will not be avoided by the efforts of the Government. They do not reach the root causes of the evils in the social life of the country. These and the thousand other evils are due to the disorganised condition of the entire community. Life in it can revive from its own ideals, if they receive sufficient countenance from the Government and the Leaders of the country by a provision made in its educational institutions. There are no ideals, compared to these, in the literature of any other country. In spite of this life is becoming a series of miseries in all classes of society, because cut off from its ancient moorings.

13. Yes, by the educative measures which every community has adopted, measures, which a proper organization should be able to make more effective, far more widespread if the peoples' machinery and the Government co-operate. It is then public opinion about the extension of the age of consent will develop.

14. Women in our part of the country do not favour early consummation. This is becoming rare, for the false notions have been exploded by the efforts of the Arya Samaj and other bodies and their educational institutions.

15. The determination of age is in all cases difficult. The present system of registration of births requires improvement. If a private organization like the Arya Samaj preserves a record, which supplements the Government system the double entries would prove more reliable. Among Hindus the horoscope served this object better.

16. This hardly requires an answer, for the above answers point out the change would be welcome as an indirect educative measure.

17—19. These are questions for lawyers to answer.

20. The second alternative that of Legislation fixing the minimum age of marriage would be better, for it would save both the girl and her husband from the temptations of an early consummation. Public opinion would prefer it.

21. The above answers show that educative measures and propaganda work are the best. But those recommended by the older culture, which the Arya Samaj have been the first to propagate by their pretty large organisation, must receive countenance from the Government and semi-Government Associations. Their work does not spread as, with the Government organisation at its back, it ought to do, because it proceeds on lines, not in consonance with Indian and, therefore, more popular views.

I must thank you and the Committee for affording me an opportunity to explain the views of the Arya Samaj. These formed the teaching in Indian Gurukulas (Universities), found preachers in the Sadhus and teachers in the Prouhitis of the country. Every grand-mother used to be a Legislator and executive authority. Her views and directions no one could question. They were the dictates of the Shastras, of those whose word was law to the people and their Kings.

Written Statement, dated the 15th August 1928, of Rai Sahib Dewan MATHRA DAS, Bar.-at-Law, Advocate, High Court, Kohat.

1. Majority of people know nothing about age of consent as there is no interference regarding marriages and their consummation.

2. Raising of age of consent will not help, it is education which can solve the mystery.

3. (a) Yes. (b) No. As stated above education alone can help. No law can be effective.

4. No. (1) Unpractical; (2) and (3) efforts are made by societies and educated class and this is the only effective way.

5. About 12 years.

6. No such cases come to court—many girls have before 13 years of age.

7. Yes—Please see Prashar Smriti, Chapter 7th, Mantras 6 to 10 besides other religious books.

8. Goana ceremony is not understood—hence no reply can be given.

9. Not in all cases especially if a girl is suffering from any disease. A girl gets puberty when she menses and when she menses ovn, i.e., eggs of the female must be present in the uterus sent by the productive glands (ovaries) through the falopian tubes there. In my opinion a girl is quite fit to produce children at the attainment of puberty without any injury to her provided (a) she is not unfit otherwise (b) the husband is not too big for her.

10. If educated within 12 to 14 years.

11. None, as such matters hardly come up to court.

12. Certainly, but there are many reasons—

(a) poverty,

(b) husband being too big,

(c) on account of female diseases.

13. None so far as I knew.

14. Yes, except a few educated.

15. Yes, registration of births with names.

16. Will make no material difference.

17. Yes, but there should be no imprisonment for marital offence. Otherwise the consequences which need not be mentioned in writing will be very bad. Extra-marital offence should be punished with seven years and whipping and reasonable compensation to the girl according to her position, etc. Unless brutal punishment is awarded such offences cannot be stopped. However this requires great discussion.

18. Regarding marital offences—no action to be taken unless there is a complaint by the wife or her natural guardian. For extra-marital offences the present procedure may remain.

19. See No. 17.

20. The minimum age.

21. Education (as already mentioned) and propaganda through societies.

Written Statement, dated the 14th August 1928, of Maulvi Mohd. MASUDAR RAHMAN, M.A. (Subordinate Educational Service), North-West Frontier Province, Abbottabad.

1. I know of no particular dissatisfaction with the state of the law as to the Age of Consent. But I can, however, perceive signs of anxiety amongst socially advanced circles to discourage early marriage and to remove chances of sexual intercourse with girls before their (girls) attaining perfect maturity.

2. The first view, I am of the conviction, almost amounts to "child-marriage", and if I be right in what I opine, I should, then, as a Muslim, refrain from insisting upon any change in the law with regard to the Age of Consent, for I think that Islam does not place any restrictions upon early marriage on which it is silent, or which it tolerates. The Islamic-Law does, of course, give a greater importance to the consent of the girl who can only

give such a consent when of mature age. But there is no express prohibition, in Islam, of early marriage. One cannot, at any rate, safely guarantee an entire absence of "occult vices" and evils that may be likely to result from the present law being retained. The Hindoo, who may historically and socially be considered as the author and original advocate of "child-marriage", appears to be falling away from the custom by way of denunciation, and he may also, perhaps, desire a change.

But, speaking generally, there appears to be no widespread, conspicuous, or emphatic, desire for change in the present law.

In the case of Muslims there is, in this respect, a marked difference between "theory" and "practice". In theory they are not ardent advocates against a retention of the present law, while in practice they follow the second view. But the main responsibility for the above divergence lies not upon religion alone, but also upon the social or family customs based upon the economical conditions of Muslims.

It would, I think, be unchivalrous to pass over in silence the fact that there is frequently a deplorable difference between "Islam" and "Muslim" and that the term "Muslims" does not always mean "Islam".

An advance on the present law appears to be essential inasmuch as it would reduce or remove, chances of "occult vices" referred to above. By "occult vices" I mean "sexual intercourse with girls not perfectly mature". This sort of sexual intercourse produces a deteriorating effect upon the constitution and general health of the nation.

Want of strength for the paternal control over the family is another consideration which necessitates an advance on the present law. This would save family-life from ruin and would add to the chances for a better intellectual growth.

Further, an advance on the present law would also postpone legal-marriage for some time. This means that matrimonial alliances shall have to await the parties ameliorating their financial conditions.

3. No, such crimes are not, as far as I know, very frequent, though seductions are not wholly extinct. The amendment of the law made in 1925 appears to have reduced, to a considerable degree, cases of rape, and to have prevented improper seduction of girls. But a little more increase in the Age of Consent and an intensification of the sternness of the law would result in still more reformatory effects.

4. Yes. And I can quote no contrary instance.

5. The age of puberty varies with family-circumstances and conditions of life. Amongst richer classes the age of puberty sets in much earlier. It may, on the whole, be fixed at between 10 and 16.

Nor can we ignore climatic effects. In colder climates girls attain puberty much later than in hotter ones.

6. Not very commonly indeed. But in illiterate classes where ignorance predominates, such instances are not entirely absent. Shyness and an innate fear of public infamy and scandal stand in the way of people's bringing such matters to court. I know of a particular case falling under this category, that is to say, "cohabitation before the girl completed 13 years". The matter came to court in a mysterious form. The real complaint of the girl was hidden almost from every body. All the courts were, throughout, kept ignorant of the real grievance of the girl (and this has, evidently, been due to the parents' fear of scandal). The girl now resolutely refuses to go back to her husband. "I'd better", she replies, "be blown off before a cannon-ball than go back to that hideous demon".

7. No. There is no such religious injunction as far as Islam is concerned. Ignorance of morality and of religion is, on the other hand, responsible for such base acts.

8 I know of no such ceremony in my part of the country.

9. In cases of stout and sturdy constitution and good built of body, the attainment of puberty is, I think, a sufficient indication of physical maturity to justify consummation of marriage. Otherwise, consummation should be postponed till the girl has made such a physical development as to be enough to justify consummation without injury to her personal health and that of her progeny.

10. Between 14 and 20.

11. Kindly refer to my reply to question 6. The cohabitation has resulted in a serious injury to the girl's health, and she is reported to have been disabled and deprived of her physical capacity to bring forth progeny.

12. There appears to be no further development of public opinion in this part of the country, the people would not, though, grudge an extension of the age of consent in marital and extra-marital cases.

13. Yes, I do consider early consummation and early maternity, deprived of comforts in life, responsible for high maternal and infantile mortality, and for all such results as vitally affect the intellectual or physical progress of the nation.

14. No. On the other hand, they resent cohabitation for their children even if early marriage (mere nuptial alliance) takes place. The Hindu custom of child-marriage exists (though not very commonly) in some illiterate rural classes in this part of the country. But that is exclusively due to the parents' desire for mere pleasure and enjoyment of happiness in the form of contracting marriages between their children and strengthening the inter-family relations by matrimonial alliances.

In cases of such marriages cohabitation is most carefully checked and guarded against, by the parents who keep the parties strictly aloof from each other till they attain full maturity and sufficient physical development.

15. Yes, one could hardly deny an existence of such difficulties. And these could be removed or minimised by:—

- (a) registering all marriages,
- (b) registering all births with as much precision and exactness as possible,
- (c) persuading parents to keep a domestic record of their family-births.

The above measures are, of course, generally adopted by educated and higher classes, but what is badly needed is to introduce these as a universal panacea for the difficulties experienced in determining the age of the girls.

16. I don't think a raising to 14 years of the age of consent would materially reduce or minimise the difficulties or margin of error in determining the age of the girls, for correctness and precision in determining, for practical measures, the age of the girls could not be guaranteed even if the age of consent be raised to 14 years.

17. I regret my inability to express an opinion on this point which appears to be a technical one.

18. This is also a legal point, and I can venture no opinion on it.

19. It is, likewise, a point of law, and I can offer no opinion on it, too.

20. I am inclined to think that the latter step, i.e., legislation fixing the minimum age of marriages would be more effective indeed, and it would prove more in consonance with public opinion in this part of the country.

This would, in other words, mean fixing or raising the age of consent, for the age of consent contained in sections 375 and 376 of the Indian Penal Code does not appear to be adequately satisfactory.

21. I should naturally rely on both.

Written Statement, dated the 15th August 1928, of Khan Bahadur ARBAB WALI MOHD. KHAN, Additional Divisional and Sessions Judge, Peshawar.

1. I think there is a genuine dissatisfaction. The people realize that the present age limit is rather short, as the girls do not attain that intelligible understanding necessary to give the free consent to sexual intercourse at that age.

2. In my opinion an advance on the present law is highly desirable, because a girl below 16 years can hardly be credited with the capacity of realizing the full consequences of her consent. It is now generally recognized that women have a right to get educated and attain full physical development. The consent of a child should give way to the consent of a mature woman.

3. In the absence of statistics I am unable to reply this question.

4. I think it had done neither. I would suggest that the marriage of immature girls should be penalized and also the age of consent raised.

5. Generally at the age of 13-14 years. Girls brought up in affluent circumstances and luxurious surroundings, however, attain puberty a year earlier.

6. Only in those classes where child marriage is still in vogue. These cases seldom come to courts.

7. To custom rather than to religion. I do not think there is any religious injunction behind the practice of early consummation of marriage.

8. There is no such ceremony in this part of the country. After the marriage the bride is taken to the bridegroom's house.

9. No. Puberty does not coincide with full physical development justifying consummation of marriage. There must be an interval of at least three years between the attainment of puberty and consummation of marriage. Sixteen years is the age at which a girl may be considered fit for the purpose.

10. Not before sixteen.

11. I cannot say anything from my own experience. Generally speaking cohabitation before puberty or after puberty but before full physical development of a girl would adversely affect her progeny.

12. Yes, for all the consequences mentioned in the question. Immature girls cannot be expected to produce healthy children. Anyhow the issues will not be physically strong.

13. People are of opinion that the age of consent must be raised higher. This wish is confined to educated and literate classes, who understand the good and evil of early marriage.

14. Not so much now as before.

15. Very often difficulty is experienced in determining the age of a girl in connection with these offences. It is true that registers are kept, wherein births are recorded but these entries do not generally give the name of the child, as no name is given to the child immediately on its birth. The difficulty would be minimized to a great extent if it is arranged that no sooner the child is named than it should be likewise reported and entry made in the register in another column provided for the purpose.

16. I do not think that by mere raising the age of consent the difficulty or margin of error referred to can be materially reduced.

17. Extra-marital offences should be treated on different footing from marital offences. Marital offences should be treated as misdemeanour and punished with imprisonment of either description for a term which may extend to three years. As for extra-marital offences I am not prepared to suggest any alteration in the nature and the extent of punishment already prescribed.

18. I would maintain the present procedure.

19. I am not prepared to suggest any safeguards beyond those existing at present which are quite enough.

20. Both should co-exist.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view. Progress of social reform by means of education and social propaganda is a very slow progress. It will assist the penal law and should not supplant it.

I shall feel thankful if I be excused from oral examination.

Written Statement, dated the 18th August 1928, of Mr. BHAN SINGH, Secretary, Singh Sabha, Bannu.

1. Yes. The present state of Law as to the Age of Consent as contained in Sections 375 and 376 of the I. P. C. is not satisfactory.

2. A girl under the age of 16 cannot think about her welfare. She is too tender to differentiate between right and wrong. Her mental and bodily conditions are not well developed. Hence the present Law requires change.

3. Though the crimes of seduction or rape are not frequent, but nevertheless the number of these crimes is sufficient to make one think about them seriously. The figures are not available to answer the last two sentences of this question.

4. Yes. The marriages of girls under the age of 13 are now very rare.

5. In our part of the Country girls usually obtain puberty at the age of 14 years. This does not differ in different communities, but in different classes owing to different nourishments this age varies from 13 to 15.

6. Cohabitation is not common—

(1) before puberty,

(2) before the girl completes 13 years.

It is common—

(3) after puberty.

7. There is no religious injunction here with regard to the consummation of marriages at all.

8. "Gaona" or "Garbhadan" ceremony is not known in this part of the Country.

9. Attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. At least one year should expire after puberty before consummation.

10. 16 years.

11. Cohabitation before puberty or after puberty, but before full physical development of a girl has been the cause of premature deaths.

12. Early consummation and early maturity are really responsible for high maternal and infantile mortality.

13. People here are too backward to form any opinion about such questions.

14. No.

15. We don't know. That is a matter for Law Courts.

16. Yes. There is very little possibility of error in the case of a girl of the age of 14, than in the case of a girl of 12. Of course if birth certificate is available there can be no error. But in case of Medical opinion, the possibility of error will be minimised in the case of the age of consent being raised to 14 years.

17. It would be convenient to separate marital and extra-marital offences. The punishment suggested in the amendment is quite sufficient.

18. That's for legal luminaries to answer.

19. No.

20. Fixing the age of marriage will be more effective. But the public opinion here would prefer fixing a higher age of consent for marital cases to that of fixing the age of marriage.

21. Strengthening of penal law would be more effective on the point and would help in eradicating the evil soon. Education and social propaganda would work slowly.

Written Statement, dated the 21st August 1928, of Rai Bahadur THAKUR DATT, President, Bhratri Sabha, Dera Ismail Khan.

I agree generally with the views of Mr. Tek Chand Nangia.

Written Statement of Mr. TEKCHAND NANGIA, B.A., B.T., Head Master, Y. B. High School, Dera Ismail Khan.

1—4. There is a wide-spread dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of I. P. C.

Consent means a willing mind on the part of the girl to allow the act to be done. If from her tender years, not knowing what was going to be done, she merely submits without the exercise of any will of her own, that will not amount to consent. The limit at which the age of consent is now fixed, favours the premature consummation by adult husbands, with children who have not reached the age of puberty and is thus productive of grievous suffering and permanent injury to child wives and of physical deterioration in the community. The object of fixing the age of consent is to protect female children from premature cohabitation and from immature prostitution which purpose the limit fixed in sections 375 and 376 has not served. The proper age at which a girl attains her physical and intellectual maturity is 16. It is then only that she can give an intelligent consent to cohabitation with a due realisation of the consequences.

Moreover in case of married couples, the law is hopelessly ineffective. The girl-wife would prefer to sacrifice her life rather than complain against her husband, however atrocious or violent his conduct may be; neither would her parents or society look with favour on such a step on her part. Hence it is that not a single case, so far as I know, has come into the Court. Fixing or raising the age of marital consent is futile. The only remedy lies in penalising the marriage of girls below 16 and of that of boys below 20. No amount of propaganda will effect this social reform. It is extremely difficult to rouse the orthodox masses who are under Brahmanic influence and suffer great hardships and sorrow. What legislation would do in a short time propaganda will fail to accomplish in a century. Turkey and Afghanistan are living examples of the present times in effecting important reforms in their social condition.

7. There is certainly no religious injunction or communal restrictions to marriages. The guardians have full liberty to marry their wards at any age they desire, and consequently there is no punishment meted out to them by the community; the result is that child-marriage is common among the illiterate, ignorant, old and orthodox masses, who being fatalists little realise that they are pushing their darlings to an early grave and are

producing an appallingly large number of widows, physically defective mothers, and puny weak children. There is nothing in the sacred books to support the view that the measure for stopping child-marriage was an interference with the religious practice: My belief is that in Vedic times the girls got married at a very advanced age. The general belief is that in Northern India the evil was aggravated during the Mohamadan rule. The Mohamadan gentry, subject to low and base passions, unscrupulously seized Hindu unmarried girls to satisfy their lust. Hindus, always resourceful, could not tolerate this and were forced to bind their innocent tender daughters in wedlock at an early age. They were wise enough to make marriages nominal and brought into practice the system known as *Mukalawa*. All that may have been essential then, but it is a pity that the then evil should have been continued till now under the present government when there is no compulsion or kidnapping of girls. No doubt a good deal has been done by social reformers but much remains to be done. If India is to be rid of such evils and to be physically a strong nation, no time should be lost in placing on the statute book a measure which would surely prove highly beneficial. Raising the age of consent is indirect action. Was not Turkey in the clasp of social evils for ages and did not a fiat abolish them? The King of Japan ordered the removal of the tuft of hair and the next morning the Japanese were tuftless. What is true of other countries will equally be true of India. The Government has earned the gratitude of thousands by abolishing *Sati*; Millions would bless it for this more useful measure.

8. The minimum age of consent should be 16, because I don't think till then girls' mental and physical powers are fully developed, so as to understand the consequences of a valid marriage and cohabitation as also of household responsibility. Children born of girls of tender age, if they survive at all, are sickly and rickety and their lives are short. It may be noted that girls are kept indoors and most of them cannot enjoy the benefits of outdoor life, good hygienic conditions, exercise, fresh air or even good food and they have rare chances of mixing with persons of mature age, experience, and high education. Deprived of the advantages of gaining a practical knowledge of life why should they be married earlier than boys who enjoy all such advantages. This is specially the case in these hard days when the problem of bread is so acute, and consequently the bringing up of children is becoming more difficult. The later they are married, the better for them and the society.

10. The coming on of puberty does not necessarily mean the approach of physical maturity, particularly in the tropics where on account of seasonal effects on the growth puberty is reached earlier. The University authorities had, on medical grounds fixed the limit of age at 15 for students appearing in the Matriculation Examination, and my personal experience as a teacher for 20 years is, that the students still lacked physical maturity. I can safely say without any fear of contradiction, that a girl is not physically mature before she is at least 16 years of age, although it may be that girls attain signs of puberty even before 13. After puberty there may be conception and this conception at such a tender age leads to disastrous results both to the mother and to her child. The bones of the pelvis are not completely ossified before 16, which at the time of conception and delivery has to bear a great strain and results in permanent injury often. Complete ossification of most of the ends of the bones is not completed before 20 years showing that nature does not bring the bones to perfection till that age.

11-12. I came across hundreds of cases in which cohabitation before puberty or immediately after puberty, but before full physical development, ruined the health permanently and even caused deaths. I observed many girls who were ruddy, lithe, more active and more daring than boys of their age, but a year after the marriage, they were turned into ghastly figures, pale and sickly and repulsive. Serious, sour, and gloomy nature replaced once jolly and gay temper. They would jump and frolic about before they got married, but thereafter, if consummation took place before 16,

anxieties, worries, and birth of children made them lazy, lethargic, and full of aches all over. The pressure was too much for them at such an early age when growth and bones are both incomplete. In a large percentage of cases their first born child does not survive. Abortion is so very common in the early stages. The effect lasts even when they are fully developed though they never know youth really. They appear old at 25 or 30 with deep wrinkles on their haggard faces. In short they and their progeny are constant victims to fever, headache, and piles which increase the bill of the doctors and the miseries of the families. High maternal and infantile mortality is also due certainly to this cause, though poverty, want of fresh open air, lack of exercise, and sedentary habits cause a lot of havoc to their already diseased body, and bring on premature death.

20—21. Legislation fixing the minimum age of marriage would certainly prove more useful and is decidedly a popular measure. Education and social propaganda, as I have already noted, must take a century and I doubt if these will succeed at all as there is going on anti-propaganda by the selfish conservative priests whose number and whose means are unlimited. If the Government really desires healthy India, such a step would be a boon and would lessen the misery of the Indians consequent on this evil usage.

Written Statement, dated the 25th August 1928, of Mr. BHAGAT RAM, B.A., Headmaster, National High School, Peshawar City.

As desired by the D. P. I., N.-W. F. P. in his No. 17242-62, dated the 9th instant, I have the honour to submit below my views and replies to the questionnaire issued by you, for eliciting public opinion.

1. There is no pronounced dissatisfaction with the law as it stands, among the masses, but the social reformers and the educated people do feel.

2. I am against retaining the law of age of consent as it is.

I am in favour of substantial advance in the present law to protect inexperienced girls. My reasons are the same as urged by the Bombay Corporation, urging advance, hence I don't recapitulate them. The increased social intercourse between men and women requires an advance on the present law, else the young girls will be much exposed to risk.

3. Such crimes are not frequent, but they do occur. The law courts alone can say with definiteness what reduction is due to the raising of age in 1925.

4. The marriageable age is being gradually raised by the people in consequence of world currents and the preaching of the Arya Samaj, that it is difficult to say that this is due to the amendment of 1925.

5. I would suggest further raising the age of consent to at least 15 in the case of husbands and 18 in the case of outsiders. In order to protect the girls, the law should be made as harsh as possible.

6. It is difficult, if not impossible, to prevent cohabitation when marriage has taken place whether at 10 or at 18. Such cases seldom come to Court as the young wives have to get along with their husbands the whole life. The proper course is to penalise marriage of girls before 14, that of boys before 20, then cohabitation will be rendered impossible before puberty.

7. The religious injunction is 16 and 25 years for marriage of girls and boys, but it does not prescribe any penalty. A Shloka in Manu Smriti was once interpreted by orthodox Brahmans as fixing 8 years for the marriage of girls, but that interpretation is discarded now. Among higher caste Hindus, marriageable age is rising but poor and lower class Hindus are still wedded to superstition.

8. No *Gaona* or *Garbhadhan* ceremony is performed in this part of the country.

9. Attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. I believe 14 is the minimum age for attainment of puberty, but marriage should, under no circumstances, be celebrated before puberty.

10. Not before 16.

11. I have known scores of cases in which cohabitation before full physical development has resulted in permanent injury or death. It is our daily sad experience in Peshawar that girls married at an early age die when they give birth to first child. This is a conclusive proof that girls are married before physical maturity. First delivery in the case of many young wives is attended with death, the reason being that they are married early. Consumption prevails more among young wives than among males. Why? There are more deaths among young wives between 15 and 25, than among boys between the same ages. Why? The reason is that young girls enter marital state before they are physically fit, hence legislation should come to their rescue.

12. Yes, early marriage is responsible for high infantile mortality as young wives aged less than 13 have given birth to children. Besides this, it is responsible for pignics of whom we have too many in these days, also for physical degeneration and low average age in this country.

13. As submitted above, the masses steeped in ignorance have no vocal voice. The educated and the Arya Samajis in particular do raise their voice for raising the age of consent and the reason is plain—as long as early marriage is not penalised by law, despite the opposition of orthodox Brahmans who are selfish and unmindful of the welfare of their community, we cannot have a race of young men physically strong to resist diseases and grow to the full height of manhood. Physical degeneration, so marked a feature of our present social life, cannot be checked unless and until legislation is undertaken to stop early marriage.

14. None except illiterate women favour early consummation of marriage. The educated women protest against it, as evidenced by the resolutions passed by them at their last Conference at Delhi.

15. and 16. In cases of rape, difficulties are experienced in accurately determining the age and conflicting medical certificates are produced in Court by the parties, these will vanish when age of consent is raised to 15 in case of husbands and to 18 in case of strangers.

17 and 18. It is for the law courts to answer these questions.

19. The offender should not enjoy any impunity the law should be made as stringent as possible. The offence should be absolutely non-bailable to prevent recurrence.

20. Legislation fixing the minimum age of marriage will be more effective than penal legislation about age of consent. Offences against age of consent fall under 2 categories. (a) those committed by husbands, (b) those by strangers; offences under (a) will not disappear unless marriageable age is raised by law and early marriage is penalised, while those under (b) can be materially reduced by raising the age of consent to 18 in the case of strangers.

21. We have waited long enough that education and social propaganda will remove these evils which are eating into the vitals of our country, but it is now brought home to us that penal law will be more effective in materially reducing the above evils. Several Indian States have taken the lead in this matter and there such offences have become less. Social propaganda cannot secure the object in view as penal law and the duty of the state is clear that it should not attach any importance to the opposition of orthodox section for uprooting social evils. I strongly support

Mr. Sarda's Bill to prevent early marriage and wonder why the Government fought shy of undertaking such a legislation themselves much earlier. I wish you every success in your noble mission.

Written Statement, dated the 30th August 1928, of Mr. Q. INAYAT ULLAH, B.A., P.E.S., District Inspector of Schools, Peshawar.

In this part of the country which is inhabited by Pathans which form 95 per cent. of the population early marriages are not in vogue. It is a fact that Mohammadan Law prohibits marriages of minors but apart from that custom is also coincident with law. In very rare cases, however, avaricious parents and guardians in contravention of Mohammadan Law and custom of the country arrange marriages of minor girls irrespective of age which result in bad consequences. In order to put a stop to such marriages I am greatly in favour of making a law fixing age limit for marriages of girls which is 15 according to Mohammadan Law.

Written Statement, dated the 3rd September 1928, of Mr. BELI RAM MALHOTRA, B.A., LL.B., Secretary, Sanatan Dharm Sabha, Dera Ismail Khan.

With reference to the letter No. 4825-G. C., dated the 8th August 1928, forwarded from the Deputy Commissioner, D. I. Khan, I have the honour to state that the papers regarding Sir Hari Singh Gour's Bill, enclosed with the aforesaid letter, were read and discussed in a joint meeting of the representatives of the Sanatan Dharm, Vaishnav and Brahman Sabha, D. I. Khan.

Herewith are the attached replies to the questionnaire published by the Age of Consent Committee.

1. No.

2. (1) It is in accordance with the injunctions of our religion. Any alternation is bound to react on the age of marriage, which according to Shastras cannot be postponed beyond the age when a girl is visited with signs of puberty.

3. No. The amendment made in 1925 has not shown any appreciable effect consequently.

4. (1, 2, 3) There are few such cases here, which might show any appreciable effect with respect to the points raised.

5. 12 to 13 years. It is the same in all communities.

6. (1) No.

(2 and 3) Yes. No cases come to the Court.

7. Yes.

8. No.

9. Yes.

10. 13 years.

11. None to our knowledge.

12-13. No.

14. Yes.

15-18. No.

19. The present ones are sufficient.
20. Minimum age of marriage.
21. Social reform by means of education and social propaganda.

Written Statement, dated the 4th September 1928, of Mian SIRAJ-ULLAH, Municipal Commissioner, Kohat.

1. Yes, there is dissatisfaction with the present age of consent as contained in sections 375 and 376 of the I. P. O.
2. (i) Retaining the law of the age of consent is not desirable.
(ii) It should be raised from 14 to 16 years.
3. The crimes of seduction and rape are not frequent in the Kohat city, but they are committed in the suburbs.
The amendment of the law made in 1925 raising the age of consent to 14 years has not succeeded in preventing or reducing the cases of rape. If the age of consent is raised from 14 to 15 years, it may have to some extent preventative effect.
4. The amendment of 1925 raising the age of consent within the marital state to 13 years has not been effective in protecting married girls against cohabitation with the husbands. The people do not care and such cases have never come to court. Early marriages should be stopped.
5. The girls attain puberty at the age of 15 years. There is a big difference among the Hindus and the Musalmans. The Hindu girls attain puberty much earlier, i.e., between 13 and 14.
6. (1) Yes, cohabitation with girls before puberty is common, but such cases never come to the court.
(2) These cases sometimes come to court.
(3) No.
7. There is no religious injunction about it.
8. I do not know any thing about it.
9. No, I don't consider the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage, after one year, i.e., at the age of 16. I consider the girls physical development to be enough to justify consummation without injury to her health and that of her progeny.
10. At the age of 16 a girl is competent in India to give an intelligent consent to cohabitation with a due realization of consequences.
11. No, I have never seen such cases, though theoretically speaking the injuries are sustained ordinarily.
12. Yes, I consider early consummation and early maternity responsible for high maternal and infantile maternity and for physical and intellectual derangement of the people.
13. The people in our country except a few educated (a negligible number) do not know the age of consent and its results.
14. The women in our country are in favour of early marriage for their children.
15. Yes, there is considerable difficulty in ascertaining the age of girls in connection with offence under sections 375 and 376, I. P. C. The age of consent should be raised to 16 years and regular registers of births should be kept and there should be strict supervision over it.
16. Yes, if the age of consent is raised to 16 years, the difficulty would be materially minimised.

17. Yes, marital and extra-marital offences should be made separate and there must be some difference in punishment for each of the two offences.

18. The procedure for the marital state should be as follows:—

- (1) Shall not arrest without warrant, (2) summons, (3) bailable, (4) not compoundable, (5) triable by court of Sessions, Magistrate of the 1st Class. In extra-marital cases the procedure should be the same as already provided in the C. R. P. C.

20. The minimum age of marriage would be more effective for marital cases than fixing a higher age of consent.

The minimum age of marriage would be in consonance with the public opinion in my part of the country.

21. I would prefer to rely on the progress of social reform by means of education to secure the object in view.

Written Statement, dated the 15th September 1929 (received 22nd September), of Mr. LADHURAM, Pleader, President, Bar Association, Bannu.

1. In this part of the country early marriages are an exception rather than a rule. Girls are very seldom married before they attain puberty. It may be generally said that the girls are not married before 16 years of age.

Amongst the Hindus we may see here and there cases where the girls are married before they attain puberty, but amongst the Mahomedans is rarely found. During my thirty years experience as a lawyer I have come across only one case of rape within the marital relation in the district of Bannu. That was before the amending Act of 1925 came into force. The accused was convicted by the lower court as according to Birth Register the wife's age was under 12, but was acquitted on appeal as according to the medical evidence produced in defence the girls age was more than 12 and looked a fairly grown up girl. Moreover on account of the isolated position of the province and the lack of social reformers' propaganda in the province the people are not aware of the age limit in sections 375 and 376, I. P. C. And as described above early marriages not being common the people don't feel the necessity of reforms in this respect. Hence there is no dissatisfaction with the existing law on the surface, but the intelligent classes apprehending lest this evil may spread here, are anxious to raise the age of consent as it would be conducive to the welfare of the community and would be doing no harm. There is no orthodoxy here who would object to the raising of the age on account of religious scruples. In the light of the above remarks I am of opinion that making advance on present law in raising the age of consent would be beneficial to the society.

Girls at the age of 14 have got an immature intellect and can be easily deluded. So the consent of a girl of 14 years is no consent in the real meaning of the word.

2. See answer to question No. 1 above.

3. Crimes of seduction are fairly frequent in this part of the country. In cases under section 363, I. P. C., the age of girls deluded borders upon 16 years and therefore it is difficult to ascertain the exact age. The girls so seduced are frequently consenting parties, but regard being had to immature understanding of girls at this stage it would be expedient to raise the age limit to 18 years to bring the Civil and Criminal law in conformity with each other. If for the purpose of civil law a girl under 18 years of age is not competent to contract there is no reason why in criminal law a girl of the same age should be competent to consent.

Cases of rape are not so common and those which occur are generally with regard to girls who are of tender age not having attained puberty. If in cases of seduction the age limit is raised it should naturally follow that in cases of rape outside the marital state the same limit should be fixed. Raising of the age of consent would be the proper measure to make the law effective for preventing cases of seduction and rape.

4. As stated in answer to question Nos. 1 and 2 girls are not frequently married before they attain 13 years of age, but even the present age of marriage within 16 years is not desirable. The only remedy to prevent marriages before 16 is to fix the age of marriage and make all marriages, performed before that age, null and void as well as to make it penal for all persons taking part in celebration of such marriages. The age of marriage should be at least 16.

5. A girl attains puberty at about 13 years of age. The town people generally on account of rich and stimulating diet attain puberty earlier than the country people who have simple and scanty diet.

6. No.

7. No. See answer to question No. 1 above.

8. No.

9. This is the question to be more properly answered by medical men. Personally speaking I would not like a girl below 18 years of age as a mother of a child. But to fix the marriage age limit at 18 would be a big jump not tolerated by people.

10. At 18 years of age.

11. I cannot mention any special case.

12. A sound mind in sound body is the established principle. A weak and sickly mother cannot be expected to produce a child of sound body and mind. Early consummation of marriage and early maternity do bring about high maternal and infantile mortality.

13. See answer to question No. 1.

14. Every Hindu parent unfortunately has a strong desire to see his or her children married before he dies.

15. No doubt difficulties are experienced in determining age of girls. There is a system in vogue in this district by which a village chowkidar writes in his book the date of birth of a child, but sometimes, as the chowkidar is an illiterate man, he does not write the name of the child or the exact date of birth. These books are sent to the Civil Surgeon's Office where they are copied in a Register. Some method should be devised by which a chowkidar should do his duty properly. The village patwari should be made responsible for inspecting the chowkidar's books weekly and making corrections according to facts. The revenue officer visiting the villages should make it a point to examine the chowkidar's books.

16. Yes. A girl above 14 years of age should unmistakably bear signs of puberty which would be helpful in judging her age correctly.

17. Yes. Extra-marital offences should be separated from marital offences. The punishments proposed in the schedule are proper one.

18. For offences within marital state the Police should not arrest without a warrant from a magistrate of the first class.

19. No.

20. Legislation fixing the minimum age of marriage would be more effective as cases of rape within marital state very seldom come to light. The public opinion would favour the fixing of minimum age of marriage.

21. Education and social propaganda are helpful in eradicating social evils, but it requires a good deal of time to give up old and established practices. Hence education and social propaganda should be strengthened by means of penal laws.

Written Statement, dated the 16th September 1928, of Mr. GOPI CHAND, President, Shri Sanatan Dharam Sabha, Kohat, District Kohat.

The Sanatan Dharam Sabha, Kohat, has thoroughly considered each and every question and has come to the conclusion that the amendment already effected in sections 375-376, I. P. C., during the year 1925, enhancing the Consent Age to 14 years is against the principles laid down by our holy Shastras, wherein the Consent Age is clearly given to 12 years. *Vide* Mantra 24, Adhia 1, and Mantras 6, 7, and 8 of Adhia 7, of Prashar Samarti, and the Sabha is not in a position to act in contravention of the instructions laid on the subject, hence it is respectfully submitted that the Assembly Members may very kindly get the Bill to be dropped for ever.

The work pertains to several functions and the same may be entrusted to the religious societies to be carried on according to custom and usages, prevailing in the localities enjoined by Shastras.

DELHI.

Written Statement of the Revd. J. C. CHATTERJEE, M.A., Member, Legislative Assembly, Municipal Commissioner, Delhi, and Honorary General Secretary, All-India Conference of Indian Christians; to the Questionnaire sent out by the Age of Consent Committee.

The opinions expressed are those held by the writer and he is prepared to be examined orally, if so required by the Committee.

1. No dissatisfaction has been expressed by the general public, very few of whom know anything of the law as to the Age of Consent. Recently attention has been called to the subject by the introduction in the Legislative Assembly of Sir Hari Singh Gaur's Bill and the propaganda carried on in support of it, by reformers, social and educational organizations, etc. There is no doubt that wherever public opinion has been educated on this subject, there has been unanimous support forthcoming for raising the Age of Consent in extra-marital cases. In respect of marital cases, it cannot be claimed that public opinion unanimously favours the proposed amendment for raising the Age of Consent. Some persons are opposed to the proposed change on religious grounds, while others believe that in these matters which deal with the private family life of individuals, progress cannot be secured by legal enactments.

2. In my opinion the Age of Consent in the case of extra-marital cases, must undoubtedly be raised. It is impossible to believe that a child of fourteen can give intelligent consent with any true knowledge of the consequences of such an act. If she is considered a minor up to the age of eighteen in all other business concerns, it is very anomalous that the law should consider a child sufficiently responsible to give her consent in what is the most vital step in the life of a girl.

Personally I would strongly press for raising the Age of Consent in marital cases as well. But from my knowledge of general society, I cannot help feeling that until public opinion is better educated and much greater social progress made, the law is likely to remain a dead letter. I am also sensible to the dangers that may result from strict application of the law in this respect, e.g., persecution of illiterate persons due to personal enmity, abuse of authority by subordinate officials or the police, etc.

3. Crimes of seduction are frequent in most large cities and Delhi is unfortunately no exception to this. So far as I am aware the amendment of the law made in 1925 has not made much improvement in this matter. It is by no means easy to prove the age of a girl, so that the worst offenders in this respect are often able to escape punishment owing to the difficulty of proving the victim to be under age. The raising of the age in extra-marital cases is very likely to make for improvement, as it will be very much easier to prove that a girl is under sixteen or eighteen years of age than it is to prove that a child has not attained the age of fourteen.

4. The amendment of 1925 so far as I am aware has had little or no effect, in either postponing the consummation of marriage or in putting off marriage beyond thirteen years. But all such measures are bound to have a gradual effect on public opinion. As I have already said the provisions of the law so far as it deals with marital cases is very little known and even less understood. Propaganda for the reform of society in this direction, the gradual spread of education and enlightenment are the chief steps

which are likely to improve matters in this direction. Mere legislation such as cannot at present be fully understood or appreciated by the overwhelming majority of the general public, in plain language must be described as, putting the cart before the horse.

5. The usual age is anywhere between eleven and thirteen. I am unable to answer the second part of this question.

6. I believe that cohabitation among the uneducated and the lower classes and in certain orthodox families is fairly common even before puberty. Among the Hindus, the depressed classes and the poorer class of Mohammadans, it takes place in most cases soon after a girl has reached puberty. The age of girls makes very little difference in this matter and is not often known in the husband's household.

7. It cannot be denied that exponents of orthodox Hinduism, quote religious authority in favour of early consummation of marriage. Personally I believe the practice is due to a degenerated social institution and that religion in this and other matters is wrongly brought into the question, by those who desire to serve their own ends.

8. The *Gaona* ceremony is fairly common in this part of the country, although I am informed that the custom is gradually falling into disuse. In these parts it generally coincides with the consummation of marriage, and frequently occurs at or soon after the attainment of puberty. Among the depressed classes it is often performed shortly after marriage and before the attainment of puberty. The child wife among these classes is often bought by heavy payments and is required to work in this husband's household.

9. In my opinion attainment of puberty is by no means a sufficient indication. I believe that a girl should have attained at least sixteen years of age to justify consummation.

10. The answer to this question would vary according to the difference in the intelligence and the education of different girls. The age at all events should be considered at least sixteen and preferably eighteen.

11. Unable to answer.

12. This question hardly needs an answer. There is no doubt whatever that early consummation and early maternity are very largely responsible for these results. I believe that there is hardly an indictment which contains so much truth in that most unfortunate book "Mother India", as the indictment brought against us of inflicting early maternity on our girls.

13. In recent times public attention has been a good deal drawn to reform in this direction, with most useful results. It must however be confessed that the development is very largely confined to the educated and advanced classes.

14. This is unfortunately true of the majority of mothers in this part of the country.

15—16. I have already partly answered these questions. If the Age of Consent is raised it would be much easier to detect a minor for the purposes of the law in this respect, than it is at present.

17. I strongly favour the separation of marital and extra-marital offences into different offences. I am not in favour of heavy sentences, unless physical injury has resulted so far as the case of marital offences is concerned.

18. I would make a difference in the procedure of trials. In the case of offences within the marital state, I would strongly recommend trial in camera and if possible trial by special magistrates, some of whom may with advantage be women.

19. I am unable to answer this question.

20. I strongly believe that legislation fixing the minimum age of marriage is much more likely to be effective, than the fixing of a higher Age of

Consent in marital cases. I am aware that for some time to come any considerable advance in the minimum age of marriage by means of law is not likely to be effective among the masses of the population. But legislation in that direction is more logical than in the other. In this part of the country I believe that public opinion in spite of the protests of a few orthodox persons, will favour legislation for the fixing of a minimum age for marriage.

21. Throughout my answers I have pressed the view that progress in these matters can only be effectively made by means of education and social propaganda. I welcome the introduction of Sir Hari Singh Gaur's Bill and the consequent appointment by Government of the Age of Consent Committee chiefly because these steps have in themselves proved to be the means of education and social propaganda. If any one believes that merely by an act of legislation however complete and stringent in itself, widespread social reforms in the matter of marriage customs can be effectively secured among the masses of the population, he is shutting his eyes to the facts of practical life. Progress can only be secured gradually and therefore we must make our laws progress by stages and take into account not merely the outlook of advanced classes or the ideals of reformers, but also pay due attention to the mentality of the masses, and the hold that long-standing customs and usages have over them.

Oral Evidence of Revd. J. C. CHATTERJEE, M.A., M.L.A., Municipal Commissioner, Delhi, and Honorary General Secretary, All-India Conference of Indian Christians, Delhi.

(Simla, 12th September 1928.)

Chairman: I take it you are a Missionary gentleman.

A. Yes.

Q. Besides the ordinary Christians with whom you come in contact, do you come in contact with Hindus and Muhammadans, and if so in what capacity?

A. Yes, I do. I have been in charge of the St. Stephen's School, Delhi, which has about eight to nine hundred boys, for over 20 years now. All my work is practically educational.

Q. In that connection do you come in contact with the guardians of the boys?

A. Yes, a great deal.

Q. One is not able from your opinion to know whether you are in favour of legislation penalising marriages as also fixing an age of consent. Are you in favour of enacting these laws?

A. I believe legislation as outlined in Mr. Sarda's Bill is a better way of proceeding in this matter than laying down an age of consent.

Q. But I cannot gather from your statement whether you would effect that legislation.

A. The mere fact that I am a member of the Select Committee shows that I would not have been on that Select Committee unless I approved of that legislation. But I may say that in these matters a certain amount of caution and slow progress is necessary. In these matters I would not like to be a revolutionary.

Q. Do you think that the ages of 14 and 18 as laid down in Sarda's Bill is cautious enough?

A. Yes, I would at any time give my vote for it. I would not go beyond 14 at present.

Q. In your answer to question 20 you say "I am aware that for some time to come any considerable advance in the minimum age of marriage by means of law is not likely to be effective among the masses of the population". Will you kindly explain?

A. I mean it is no use blinding ourselves to this fact that if we pass legislation to-morrow and raise the ages to 14 and 18, it will not become of universal application. Even now you have got the age of consent fixed at 13, but I will ask you if you know of any prosecutions under that Act.

Chairman: Very few.

A. We have got the law, but at the present time it is practically ineffective. The same thing will happen in the case of marriages. That is what I want you to note. My point is, how can we in the villages where the masses live provide for complaints being made. Even if the complaints are made, how are we to ensure that they can be sustained. The question of age is extraordinarily difficult to prove. There is no compulsory registration of births or marriages. You will never know how many marriages take place in a village unless somebody is interested enough to make a complaint. The question of registration of marriages has not been insisted upon by the Legislature. In villages marriages will take place and no cognisance will be taken. The method of registration of births is very inefficient. (In the circumstances it is difficult to know the age of any one in the villages. Take the cases that come under the Age of Consent Act, for instance. I have known of some cases in the course of my work.) In one case we had known for certain that the girl was of a certain age. But the prosecution could not prove that in court because registration of births is not properly made. When it is so difficult to ascertain the age of a girl in cases in which the public is so much interested, much more so will it be in the case of marriages which are after all private occurrences. If you cannot prove the age you cannot sustain the prosecution. That is my point.

Q. Do I understand you to say that the difficulty of proving the age would be a bar in the way of these cases getting proved in the court and therefore that the law would be ineffective?

A. Yes. But I am not saying that you ought not to pass the law. There is in the people what I may call an inertia which may be due to social conditions. If you can only think of these cases not as happening in educated societies and in large cities, but in the villages of India and in the country side of India, you will then realise the difficulty. It is there where the masses live. We have got to take into account their mentality. We have got to take into account the mentality of the Pandits and the Mullas. We ask a man in the village "What is your boy's age?" and he says "Whatever you like to put it down as". We again ask him "What after all is the boy's age?" and the reply is 7 or 8 or whatever you please. That is why I am trying to show that the difficulty of proving age would be very great. I have also shown how it will be difficult to get these cases taken up. That is why the law is like to be inoperative. There is the difficulty of getting responsible men to take up the case and there is also the difficulty of proving the age.

Q. With regard to these matters, what would you suggest? How can we effectively lodge a complaint and prove the age?

A. Are you speaking about the Marriage Bill or about the Age of Consent?

Q. The Marriage Bill, if that is likely to be more effective than the Age of Consent.

A. The Marriage Bill ought to come first. That is my contention.

Q. What steps would you suggest for making the complaint and proving the age? Our object is to prevent early union and motherhood. (What would you do to have the complaint properly launched and the difficulties faced? How would you tackle the problem?)

A. There is one small thing which I can suggest which likely to bring about the change. If you introduce a system of compulsory registration of all marriages you will be getting your objective. If every marriage that takes place is by law registered and penalties imposed, on people who evade or neglect the law, things will improve.

Chairman: Have you any other thing to suggest?

A. I cannot suggest anything tangible. If you pass a law the law must to some extent move and stir public opinion. The very fact that the law must have an echo in society and people will, if the law is passed, begin to think about it, and complaints will begin to come in. I cannot, however, suggest anything definite about complaints. It will take its own time.

Q. How can we satisfy the orthodox party both in regard to Marriage and Age of Consent and at the same time prevent early consummation and early motherhood?

A. There are methods, of course, but the question is if I would recommend them. The first method is the one suggested by a very orthodox gentleman from Madras who pleaded before the Select Committee. He was the representative of the Shankaracharya Mutt. What they desire is (and if you can do that it would disarm orthodox opposition) that you should exempt from the operation of the Act certain specified sects or communities. That is certainly one method. Or you can make marriages possible in certain special cases with the permission of, say the District Magistrate or you can appoint Advisory Committees giving them power to permit marriages in specially emergent circumstances.

Chairman: There must be some exceptions, then?

A. The penal operations of the law should not operate in the case of marital offences unless there is a case of actual physical injury proved. You can make exceptions of the kind. But I am not in favour of such a course, I believe we should pass a law and face orthodox opinion. In no country have there been reforms made otherwise. If we believe that the law is necessary in the interests of the country, orthodox opinion is not so powerful as we think. These are only bogies. After a time orthodox opinion will come round as it has come round in the case of Sati and Infanticide. It is all a question of time. (But I do not personally recommend that.)

Q. Would you therefore rather pass legislation and leave the rest to time?

A. Yes.

Q. As regards the Age of Consent, what age would you recommend for marital cases?

A. As I have stated already, I am extremely doubtful of the efficacy of any legislation where marital cases are concerned. You cannot set up an inquisition in this country. If the law allows marriage at 12 you cannot penalise consummation at 14 and punish boys for what the customs of the country or ignorance of our people sanctions. What actually happens in the Punjab and Delhi is this; the boy and the girl are brought together by the parents or guardians and you have the natural consequences. I do not know of any case within the marital state where a prosecution has been launched.

Q. Do I take you to mean that you will not have legislation of that character at all?

A. Have legislation if you like, but it will be ineffective; and even if it is effective, there will be abuse of it.

Mr. Kanhaiya Lal: There have been prosecutions in almost every province during the past two years even under the existing law. Though the number has been few, there have been successful prosecutions.

A. My difficulty is this. I have known of serious harm coming to a girl-child. The girl was taken to a hospital and kept there for a long time, yet I have not known even the hospitals authorities complaining under this Act, leave alone the parents.

Mr. Kanhaiya Lal: A case has been reported from the Punjab where there was hæmorrhage. The Doctor made enquiries and sent a report saying that such an offence had been committed. Prosecution followed with results with which we are not concerned.

A. But those cases can be counted on one's fingers.

Q. But there have been cases.

A. In my province I cannot be sure that there have been. My position is that you ought to impose severe punishment whenever there is a case of physical injury. But I am talking as a practical man. I am thinking of the state of the society we live in. I cannot honestly feel that once you allow marriage under the laws of the land you can penalise people for the consequences. You cannot pry into the inner secrets of a family.

Chairman: There will be greater opposition if an age-limit is fixed for marriage than there will be if a suitable age is fixed for consummation. Is that so?

A. I do not think so. I hope you are aware of the speech of Mr. M. K. Acharya who spoke on the subject in the Legislative Assembly. If he really represents orthodox opinion (I am ashamed to repeat what he said) he was terribly opposed to both. But I do not oppose it.

Mr. Kanhaiya Lal: Are you in favour of legislation penalising consummation within a certain age?

A. Yes, as an ideal only

Q. Would you like to put it into practice?

A. Yes, but we must take actual life into consideration.

Q. There will be a positive advantage in having a law fixing a minimum age?

A. Yes, but I am saying that at the present time the law is not going to be very effective.

Q. But if you have a law at the present time it might be operative and in due course produce results you have referred to. There is less opposition to the Age of Consent. Would you therefore be in favour of legislation fixing an Age of Consent?

A. Yes. Legislation is bound to have an educative effect.

Q. There have been cases under the existing law in which infringement has been punished. Even if there are only 4 or 5 cases, it will make public to be more careful in future. Is that not so?

A. But then there is an appalling amount of ignorance amongst the masses of the people. I did not myself know that there was such a thing as an Age of Consent in marital cases. If so, what about the people who have not heard anything about it. I would recommend that steps should be taken to make them widely known. Things like this form very disagreeable reading, and it is difficult to give publicity; but publicity ought to be given in the interests of the people.

Q. If the mere distribution of the questionnaire in different parts of the country has agitated the public mind and stimulated public opinion to some extent, would not legislation do it still further?

A. Yes, I have said so. I have said that an educative influence will be the effect.

Q. What age would you recommend for consent within the marital state?

A. I am in a difficult position in answering this question. If I were to give my personal opinion that would not be acceptable to the country, because I do not consider that consummation of marriage should take place before 17 or 18. But I cannot give you that opinion, because it is talking idealism. I cannot think only of my own community. I have to think about the country at large. Therefore I will have to put it much lower for the purpose of legislation, say 15.

Mr. Kanhaiya Lal: You have said in your answers that cohabitation among the uneducated and the lower classes and in certain orthodox families is fairly common even before puberty. Is that not a very strong ground for speeding up legislation to prevent consummation before puberty?

A. I would be very glad if you can bring about that legislation. I will support it. I have only stated what I think is the state of affairs in any part of the country.

Q. What limit of age would you fix in extra-marital cases?

A. Well, I consider this only from one point of view. The law says that a person is not a major till a certain age in other matters. A woman is a minor upto the age of 18 for all business purposes. She cannot even part with 10 rupees in a business transaction. It is very anomalous, as I have said in my answers, that a law should consider a child sufficiently responsible to give her consent in what concerns her life most. I should therefore put it at least at what is the majority age, i.e., 18. But in these matters you have got to be practical. It is only for purposes of legislation. I wish I could say 21.

Q. I think you will recognise that sexual matters are matters of natural impulse. The age of majority has been fixed, for the protection of property.

A. My answer to that is that nature, if you like to call it nature, never prevents any man to fritter away the property before 18, if he wishes to do so.

Q. But there is a certain age-limit and the law gives protection upto that age for the preservation of property.

A. Why should not the law give that protection to humanity?

Q. There is a natural impulse which arises much earlier than 18.

A. Well, what is the law in England? I believe it is 21 in England.

Q. No, it is 16 for carnal knowledge, and 21 is the age of majority.

A. I quite see the force of your argument. I believe that has to be, if you want to make social progress here. I have no sympathy for extra-marital offences. I would press for the age of 18.

Q. If you fix the age as high as 18, might there not be cases of hardship to young boys who might fall a prey to temptation where the girl consents.

A. I quite understand that. But I trust the court has a certain amount of discretion, a certain amount of commonsense.

Q. But only in adjusting the punishment and not in remitting the punishment altogether.

A. Can't the law be comprehensive enough to provide for cases like that.

Q. I have already told you that the punishment can be adjusted according to circumstances but it has to be inflicted, consent or no consent. If you fix the age as high as 18 how would you deal with such cases?

A. We have to meet these hardships. Take the law of divorce, are there not many cases of hardship? But I will stand by and vote for the law. I quite see your point. But how many cases of a girl going wrong have come to the courts. It is only cases of assault that come to court.

Q. But the result may be that the victim might be punished and the aggressor in some cases may escape completely.

A. I quite see your point. But I am afraid you cannot move me from this position, because I have said that cases where the girl is an aggressor are so few and it is extraordinarily difficult to prove such cases.

Q. In the hills, we are told, that the girls are very loose and the danger of such cases occurring in the hills is much greater. So you have to be very cautious in fixing a high age.

A. I stick to the view. I agree that in the hills and among backward classes the morals are low. But it is only where there is grave injury that

these cases come to light. Not more than one out of a hundred ever go to a court.

Q. You have a number of cases reported in which the girl is alleged to have given consent. At present the age-limit is so low that there is no hardship. But if you raise the age to 18 cases of hardship will arise and the tables might be turned. Young men and boys may be the sufferers.

A. Well, my personal belief is that we will not be able to get through legislation of 18. It will come down to 16. If we begin with 16 it will come down to less than that.

Q. Then as a practical legislator, would you recommend 16?

A. When it comes to the Legislature an amendment will be moved to the effect that it should be 16. I shall accept it but I would not urge it.

Q. If in European countries it is 16, would you recommend 18 here where the climatic conditions are different.

A. Well, I am sure you are cornering me now. As I said, I am almost certain that it is going to be 16 in the Legislature.

Q. Would you prefer 16?

A. I shall accept 16 as a measure of progressive reform.

Chairman: Do you know that in a number of offences under the Criminal Procedure Code the first offenders are warned off? Would you suggest some such thing in the cases that Panditji is thinking of, supposing such a case does come to a court?

A. I entirely agree. A warning would do.

Mr. Kanhaiya Lal: What punishment would you propose for marital offences?

A. I am only speaking from the point of view of practicability. Except in cases of grave physical injury I am not going to recommend to you any imprisonment in the case of marital offences. I should therefore recommend a fine.

Q. But you surely recognise that the fine will really be a fine not on the husband but on the parents of the husband?

A. I know, but the parents cannot escape the responsibility for having married the boy at such an early age.

Q. Well in that case if the only punishment is fine there may be many people who would be ready to defy the law.

A. But they will be morally convicted by public opinion and the publicity that is attached to it is not a small thing.

Q. Would you recommend that marriage legislation should be supplemented and strengthened by penal legislation fixing the Age of Consent.

A. I think that the marriage will come first and if it comes first it has to be strengthened and supported by penal legislation fixing the age of consent. I still believe that the imposition of a fine will be a sufficient deterrent, and it will be easier for you to put the law into practice.

Q. Do you mean there should be no imprisonment provided by the law?

A. No, except where physical injury takes place. In such cases I would give the court an alternative, fine or imprisonment, but it would not be incumbent on the court to award imprisonment.

Q. To whom would you give the right of complaint in marital cases?

A. That is a thing which requires very careful consideration. That is the whole crux of the question. I should not allow any court under a District Magistrate or a Presidency Magistrate to take cognizance of such offences, and I should give the right to make a complaint either to a qualified medical practitioner or a competent district official.

Q. But the district official would not be in the know of things. He can make no complaint nor can he take the responsibility.

A. Then the medical practitioner would be in the know.

Chairman: You will remember that the medical practitioner establishes a confidential relation with the patient and he is prohibited from giving out any such case. He is not bound to report.

A. Is that the law?

Mr. Kanhaiya Lal: It is not the law but the medical profession requires protection. Won't you make the parents or relations of the girls responsible?

A. Relation is such an extraordinary difficult term to define.

Q. But the wider the circle the better. The chances of collusion will be less.

A. I agree that the guardians and relations of the girl should be authorized to make a complaint.

Q. And not the relations of the husband?

A. The husband will be the accused, very well, you can put them in for the purposes of legislation.

Q. Would you like to give that authority to social reform organizations or women's associations in the country, if there are any?

A. Recognised social associations certainly. I would not like any man to get up and say for the purpose of that act that he or she is a reformer.

Q. Recognised by whom?

A. By the proper district authority, as there are registered associations for such questions as detention and probation and things of that kind. It must be an association of standing and responsibility.

Q. Would you like to have women magistrates?

A. Nothing could be better. I have suggested that in my statement.

Q. You have referred to the question of registration of births. Can you suggest any method for making that system efficient?

A. I am afraid I have not given any thought to that question.

Q. You have also suggested the registration of marriages. What system would you suggest?

A. In the first place there ought to be some efficient system of registering the priests in the country. Take for instance the Christian Marriage Act. A marriage to be solemnised must be performed by a licensed priest. Then I think there ought to be a proper record kept of all the marriages by the priest. He may be required to keep a register in which the names and ages of the contracting parties should be registered. Two witnesses are also required under the Christian Marriage Act. Then there must be registrars of marriages in this country as in European countries, I think we ought to have a registrar of marriages in each Tahsil. I know it is going to be expensive.

Q. Who should make a report to the registering authority?

A. The licensed priest should make a report to the marriage registrar. It will be incumbent on him to send quarterly or monthly reports to the registrar of the Tahsil. The onus ought to be on the priest who is paid.

Dr. Beadon: Do you think something might be done as a sort of social pressure by refusing men into colleges who are married?

A. That has been done in the United Provinces. I am in favour of it. I shall support it if the Delhi University or the Intermediate Board introduce such a rule. Sufficient notice must be given to the parents so that it may not interfere with the education of children. It must be notified that from such and such year and date married boys will not be allowed to enter the school. I approve of the suggestion.

Written Statement of the Delhi Provincial Council of Women, dated the 19th August 1928, submitted by Miss RAZA ALI, Honorary Secretary.

1. Amongst the thinking and the more advanced sections of Indian Society there is a great deal of dissatisfaction with the state of the law as to the Age of Consent—Sections 375-376, Indian Penal Code.

2. The desire is that an advance on the present law should be made, and the age of consent both within the marital state and without should be raised. The reasons for and the circumstances justifying such an advance are:—

- (1) The evils that result from the early consummation of marriage.
- (2) The high death rate amongst women between the ages of 15 and 20 in the communities when it is customary to marry girls before puberty.
- (3) High mortality amongst mothers who are too young to bear children.
- (4) Permanent injury to the health of girls who have had to submit to early consummation of marriage—aggravated in the cases of the 2nd and 3rd marriage of men over 40 years with girls of 12 and 13.
- (5) Very high infant mortality.
- (6) The interference that must result with the education of girls who in most cases are obliged to give up education with the consummation of marriage.
- (7) Lastly the children born of mothers who are immature are weaklings, and this poor health is passed on from generation to generation. Thus establishing a vicious circle resulting in the undermining of the health of the nation.

Outside marriage there are cases of young girls being forced too early into a life of shame for one reason or another.

4. The amendment of 1925 has helped to protect married girls against cohabitation before the age of 13. The consummation of marriage has had to be postponed to that age and in so far it has helped to stimulate public opinion. But amongst those communities with whom early marriage is a communal law it has not helped to postpone marriage till after 13 years. Legislation in this direction has not been as effective as it might have been, for two reasons:—

- (1) It is almost impossible to obtain direct evidence about consummation of marriage unless the girl-wife happens to conceive.
- (2) Even so within the marital state no complaints about the man are likely to be made and no case of this nature is likely to be brought to the courts as punishment for the husband would directly affect his wife and family.

The only effective way of protecting girls is by raising the age of marriage by legislation. Marriages in India are attended with much publicity and there would be no difficulty with regard to getting evidence about the marriage. Secondly, owing to the defective system of registration of births in India, it is very difficult to prove in a court of law the age of a girl. Medical science has failed to prove the age of a girl with sufficient precision for conviction in a law court. Therefore if the law is to be made effective there should be:—

- (1) Prohibition of marriage before a certain age.
- (2) An efficient system of registration of births.

5. The usual age at which girls attain puberty is between 11 and 13 years. The age certainly differs in different castes and classes of society.

In communities where we find early marriages encouraged girls usually mature much sooner, probably due to a certain emotional excitement caused by the ceremonies they are subjected to. Again girls leading a healthy outdoor life mature later than those who lead a sedentary and confined life. Influence on a girl's mental outlook usually affects puberty. Much therefore depends on the surroundings in which she is brought up.

6. Cohabitation is not common—

- (1) before puberty,
- (2) depends on different communities and even on individual families. Some make it a practice of allowing cohabitation soon after puberty, others wait a year or two,
- (3) when a girl attains puberty before 13, it is possible cohabitation might be allowed before the age of 13. Hardly any of these cases come to court for the reasons enumerated above.

7. The practice of the early consummation of marriage cannot be supported by religious injunction. It is in most cases only a social custom and a certain amount of superstition may attach to some cases.

8. The *gaona* ceremony is almost a universal ceremony. It usually coincides with the consummation of marriage but there are cases where it is anterior to consummation of marriage. It is generally performed after the attainment of puberty—whether soon after or some years after depends entirely on individual usage and belief. There are cases where the *gaona* ceremony is performed before puberty but in such cases it does not coincide with the consummation of marriage.

9. The attainment of puberty is not at all a sufficient indication of physical maturity to justify consummation of marriage. Girls have been known to attain puberty at the age of 9 and 10 years. Opinions differ as to how long after puberty a girl's physical development is enough to justify consummation without injury to her own health and that of her progeny. According to the law of Manu a girl should be married three years after she has attained puberty. A good deal would depend on the health and physical condition of the girl and each case should be judged individually. Certainly consummation of marriage should not take place for at least 3 or 4 years after puberty, provided the girl matures at 13, i.e., between 16 and 17 years,—without injury to her own health and that of her offspring. A girl under sixteen is not sufficiently mentally or physically developed to undertake the responsibilities of motherhood.

10. A girl in India might be considered competent to give an intelligent consent to cohabitation after the age of 16. Even then brought up in the restricted surroundings of the ordinary Indian home it would be doubtful if she would be able to do so with a due realisation of consequences. Outside the marital state the average Indian girl has very little sexual knowledge. The restrictions of Indian social life favour complete ignorance on such matters in well-to-do families.

11. A case of cohabitation before full physical development of the girl might be quoted where in 1925, a young wife was brought to the Bangalore maternity hospital for confinement. The doctor agreed that a girl was not sufficiently developed to bear her child in the natural way and decided on a Caesarian operation—which was duly carried out successfully. The girl mother was not even developed enough to be able to feed her infant. The child—a miserable specimen of humanity—was started in life with more than one handicap. The doctors were of opinion that the girl-wife could not be more than 13 years of age. Naturally therefore cohabitation in her case must have started before the age of 13 and before she had developed fully physically. Many other cases might be quoted from hospital registers.

12. Early consummation and early maternity are certainly partly responsible for the high maternal and infantile mortality so common in India. The intellectual and physical progress of the children would naturally depend on the intellectual and physical condition of the parents.

13. Public opinion in our part of the country is in favour of an extension of the age of consent in marital and extra-marital cases to beyond that laid down in the Amendment of 1925. To a large extent it is general except amongst the uneducated classes—but even where the desire exists very often parents are helpless in marital cases as the community law forces them to allow cohabitation sooner than they otherwise would.

14. Women who are slaves to custom and superstition usually do favour early consummation of marriage for their children, but a large number of even these are in their heart of hearts convinced that it would be better to delay it, though they have not the courage to break the custom.

15. Yes, great difficulty has been experienced in determining the age of girls in connection with offences under Sections 375, 376, Indian Penal Code. The only reliable measure that can be suggested is the compulsory registration of births in India.

16. The margin of error might be minimised materially if the age of consent is raised to 14 in a great many cases. It seems essential to judge each case individually from the physical development of each girl.

17. Yes, extra-marital and marital offences should be separated into different offences. In marital cases the punishment must be such as would protect the wife.

20. We consider that legislation fixing the minimum age of marriage would be much more effective than penal legislation fixing a higher age of consent for marital cases. We have already tried to explain how difficult it is to prosecute offenders against the law within the marital state. Comparatively few cases come to the law courts, as punishment for such an offender would affect his wife and family too vitally, so it is always the girl-wife who from a sense of loyalty to her husband is prepared to be the only sufferer. Once a minimum age of marriage is fixed—offences only outside the marital state will be committed and there being no question of loyalty to a husband, in such cases it will be easier to prosecute the offender. In our opinion with the delaying of marriage to a reasonable age, it would be removing temptation to transgress the law in the case of a good many young men. Public opinion in the communities which favour early marriage would perhaps uphold penal legislation fixing a higher age of consent rather than the fixing of a minimum age of marriage. We declare that the latter would be far more effective and is therefore very much more desirable.

21. We prefer to rely on the strengthening of the penal law to secure the object in view rather than on social reform by means of education and social propaganda. It has been our experience again and again that in matters of such vital importance the law acts as an educative factor and is far more effective as such than all the social reform propaganda that can be done. It has been so in the case of Sati, vaccination and inoculation; and we are convinced that it will be so in this case too. Education will require many years and social reform is usually an extremely slow measure requiring people with a good deal of moral courage to defy public opinion and support their convictions. Both these factors useful as they are, have been at work for very nearly 100 years but the progress has been very slow. We therefore strongly support the strengthening of the penal law first and are certain that social reform and education will do the rest.

Oral Evidence of Mrs. B. RAMA RAO, representing the Delhi Provincial Council of Women.

(Simla, the 12th September 1928.)

Chairman: You come on behalf of the local Branch of the Womens' Council?

A. On behalf of Delhi Provincial Council of Women.

Q. Is there a local branch?

A. It is the same that works at Delhi.

Q. Are you Secretary of that?

A. No; I am only one of the committee.

Q. Have you been asked to give evidence?

A. Yes.

Q. As remedies against early motherhood which of the two remedies that are now before the Assembly would you prefer, or would you want both?

A. Personally I think the child marriage bill is certainly much more important than the age of consent.

Q. Do you think that would be the opinion of the majority of the Delhi Provincial Council?

A. Yes.

Q. Would you like the Marriage Bill passed and the Age of Consent Bill not passed for instance?

A. I think that both would be very useful. Even there the Age of Consent Bill aims at raising the age to 16 and the Child Marriage Bill is only 14. Personally I think both are useful though I would attach much more importance to the Child Marriage Bill.

Q. It has been said that the law as it stands has been ineffective. Why then do you urge the raising of the age of consent?

A. The law has been ineffective in the case of marriage.

Q. I understand from your replies that there are very few cases that come to court and therefore it is ineffective. What is the use of raising the age of consent?

A. Only as a precautionary measure.

Q. Do you think it will have an educative effect?

A. I think legislation as a rule has an educative effect?

Q. Have you any method to suggest whereby we can reconcile orthodox opinion and yet attain our object, namely, that of preventing early union and early motherhood?

A. I heard one suggestion the other day that appealed to me and that was retaining the *gaona* ceremony, and penalising it before a certain age.

Q. That is penalising it before a certain age?

A. Yes, that will reconcile the orthodoxy to some extent. The marriage would take place but *gaona* ceremony would be postponed to a date later than it is at the present moment. This is, it would become law that the *gaona* ceremony should not be performed under the age of 14.

A. Are you aware of the fact that orthodox view is in favour of pre-puberty marriages and unions soon after puberty? They think both are enjoined.

A. I do not think so. I have come across a great many orthodox people who do not necessarily perform the second ceremony soon after puberty.

Q. They say that it has been enjoined that union should take place all the same.

A. It is not interfered with in cases in which young men go to foreign countries for education and consummation is delayed. They do not think that it is a crime if *gaona* is not performed.

Q. But such cases are one in a hundred.

A. I think they are frequent.

Q. Do you mean to say that marriage is enjoined but *gaona* is not?

A. Yes.

Mr. Kadri: There is no *gaona* ceremony in the Bombay Presidency?

A. I am talking of Northern India, we have it in Madras also.

Mr. Kanhaiya Lal: Do you favour an advance in the age of consent?

A. Yes.

Q. What age would you propose for marital cases?

A. At the present moment if you get legislation fixing it at 14, you will have achieved something.

Q. Would you be satisfied with 14?

A. Certainly not; I recommend 16.

Q. What age would you suggest for extra-marital cases?

A. Between 16 and 18. It all depends on the physical development of the girl. Individual cases must be judged individually.

Q. There is a complaint that because the law has been ineffective very largely in marital cases, if you raise the age to 16 there is a greater danger that the law will be still more inoperative?

A. I think at the present moment if you legislate for 14, you will be meeting the purpose, although my personal view is that 16 ought to be the age. If the Child Marriage Bill does go through, then you may try to raise it to 16.

Q. Do you recommend 14 in order that there might be no opposition?

A. Yes.

Q. To whom would you give the right of complaint against infringement of the law in marital cases?

A. I think parents and guardians of the girls come first, and then I would give the right to the head of the society to which the girl belongs either communal or social reform or other recognised organisation.

Q. Would you like to set up town *panchayats* or village *panchayats* for the purpose?

A. No, I do not think it will be practicable at all.

Q. Would you like to have women magistrates to try these cases?

A. Yes preferably.

Q. And you think there would be plenty of educated women available in the country to take up this work?

A. Yes, I think so.

Q. Would you have a Bench of women magistrates for this purpose or a single woman magistrate working and trying such cases?

A. I am afraid I am not a lawyer. One certainly, if you cannot get two.

Q. Would you make the offences in marital cases cognisable?

A. No.

Q. In non-marital cases you suggest 18 as the age of consent?

A. Yes.

Q. Is there any danger or hardship to young men or young boys who might fall a prey to temptation, if the age is put high?

A. Of course, but at 16 there will be less danger.

Q. Are you prepared to accept 16 in extra-marital cases?

A. Yes.

Q. You have suggested that *gaona* ceremony might be penalised, if performed before a prescribed age. But perhaps you are aware that at times one of the objects of the *gaona* ceremony is to permit the girl to pay visits to the house of her father-in-law from time to time. Would not there be a very strong opposition from the orthodox community and also from the non-orthodox community to the penalisation of the *gaona* ceremony before the prescribed age?

A. I am afraid whatever change you may make you are bound to meet with opposition.

Q. Would there not be greater opposition to the penalisation of *gaona* than to the fixing of an age-limit in marital cases?

A. As far as I know in these cases the girl visits her father-in-law's house even before the *gaona* ceremony. *Gaona* ceremony comes at a later stage.

Q. By *gaona* you mean the ceremony that is preliminary to consummation?

A. Yes.

Q. Would it not be preferable to penalise consummation, not *gaona*?

A. *Gaona* ceremony is a public ceremony but I do not think you can possibly penalise consummation?

Q. But even if you allow a girl from time to time to visit the house of her father-in-law, is there no danger of consummation taking place?

A. No, because the ceremony has not been performed and also the girl is constantly under the care of the elderly people.

Q. Opportunities may arise in these circumstances when all the elderly people are away or there may be no woman in the house and the consummation may take place secretly?

A. Vists of that nature are really made on ceremonial occasions when all the relations meet and then I do not think there is any danger.

Q. If there be such a danger and consummation does take place privately, then according to the law which you propose, the consummation will go unpunished?

A. No, I do not think so. The penalty would be there and as you are penalising the age, that is only a means of doing it.

Q. Would you all the same penalise consummation before a certain age?

A. That goes without saying.

Q. You have referred to the registration of marriages. Do you approve of the idea?

A. Yes.

Q. Who should be the person responsible for reporting the marriage—the parents of the bride, or the parents of the bridegroom or the priest?

A. I think the responsibility should rest with the priest who performs the ceremony.

Q. And not with the parents?

A. Also with them, but it should be an obligation on the priest, as the marriage ceremony cannot be performed without him.

Q. To whom should the reports of the marriage be required to be made?

A. That is a very difficult question to answer. I think the head of the village, whoever he may be. Government should devise means to get somebody to register births as well as marriages.

Q. Would you like the registering authority to issue certificates of those marriages, when they are celebrated?

A. I think that is very desirable.

Mr. Kadri: Would you suggest any difference in procedure for the trial of marital offences and extra-marital offences?

A. I would not dare touch legal questions.

Q. For instance trial in camera in the case of husbands when they are accused.

A. The point is that when such cases are penalised there should be publicity.

Q. If there is publicity men may not come forward to report?

A. There are two ways of looking at it. One is to make the public understand so that they may take example from it, and the other is that people may not come forward to report.

Q. In the case of punishment would you make any difference in the two offences?

A. Yes.

Q. In marital cases would you give fine or imprisonment?

A. Personally I am not in favour of imprisonment. It means a tremendous hardship to the wife.

Q. There are very violent cases.

A. I think imprisonment means suffering for the wife still further, and you will increase her misery by committing the boy to jail.

Mr. Kanhaiya Lal: May I know if that is the opinion of the association you represent?

A. That is entirely my view.

Mr. Mudaliyar: You have said that marriage legislation will be much more important. The Child Marriage Bill has been amended by the Select Committee with the result that punishment for such cases is very light. Don't you think in that case that the raising of the age of consent within marriage is absolutely essential to supplement it?

A. In my opinion the age of consent applies very little within marriage because you get so few cases in court.

Q. Don't you think that the higher you raise the age the larger would be the number of cases coming to court?

A. I don't think it would be.

Q. There are more chances of a child wife getting a child before the age of 16 and she cannot possibly do it without an offence being committed. In that case nobody is required to bring the case to court.

A. In those cases the difficulty is to prove the age of the girl. I have seen cases like that myself. Naturally the law was broken but you cannot prove that the girl was 13.

Q. As you have pointed out the margin of error in finding the age will become less and less. Don't you think at the age of 16 it will be very much less than at the age of 13?

A. Yes.

Q. What would you call the offences within marital state? In the case of extra-marital offences it is called rape.

A. I do not know. You may call it rape but the punishment should be quite different. I was thinking of punishment only.

Q. As regards punishment you say that it should be such as to protect the wife. This act would be against the wife?

A. I mean to protect the wife from public opinion and all the consequences involved in dealing with the husband. If the husband is sent to jail the wife will suffer all the more.

Q. Don't you think you are making the law lenient and in favour of brutality by the husband?

A. No I am thinking of protecting the wife. One of the women in the council suggested that a husband should be punished by public flogging. Personally I disapprove of it.

Q. If it were only a question of fine don't you think that orthodox people who believe in religious injunctions would violate the law and pay the fine?

A. I do not suggest fine only. It is for the lawyers to devise some means. I suggest compulsory separation of the wife for some period. Some punishment of that nature should be devised rather than flogging or jail.

Q. You do not approve of the present punishment of 2 years' imprisonment that is prescribed?

A. I do not approve of severe punishment because it reflects on the wife.

Q. Don't you think there is a great danger of legislation being ineffective if merely fine or something, as you suggest like the compulsory separation of the wife, is prescribed as the only punishment?

A. I think that is very difficult to answer.

Dr. Beadon: You have suggested compulsory separation in such cases. But we are told that if the man is separated from his wife, he will take another wife, and will go scot-free? Can you suggest any remedy for this?

A. That is a work for the social reform bodies.

Q. In answer to question 2 you say that "the reasons for and the circumstances justifying such an advance are: Permanent injury to the health of girls who have had to submit to early consummation of marriage". Can you give us any instances in which permanent injury was in your own personal knowledge?

A. Yes, personal injury for the girl. I saw the external results only. The rest of it is a medical question and a doctor would be able to answer better.

Q. Another point. You say that "outside marriage there are cases of young girls being forced too early into a life of shame for one reason or another". Will you kindly explain what you mean?

A. I mean instances of prostitution where girls are taken advantage of by their elders for purposes of their own material benefit and forced into prostitution.

Q. Will not that be remedied by putting the age of consent at 16 outside marriage?

A. Yes.

Q. We have been told that early consummation and early maternity are certainly partly responsible for the high maternal and infantile mortality so common in India. But we have been told by some of the witnesses that in cases where early marriage is common, there the infant mortality is least. Do you think that is correct?

A. No, I do not. I think early consummation and early maternity are responsible for child mortality to a great extent. Also education of the girls suffers. They do not know the elementary principles of maternity and child-welfare.

Q. One of the opponents says that the child is not reared by the mother but by the elders of the family.

A. That is a very great mistake. It is the duty of the mother to rear her child rather than leave it to the elders.

Oral Evidence of Dr. SETHNA, Health Officer, Delhi City.

(Delhi, 9th October 1928.)

Chairman: How long have you been Health Officer?

A. For the last 14 years.

Q. What is the population of the city?

A. According to the 1921 census it is 2,43,987.

Q. What is the number of males and females?

A. Males 1,42,938 and females 1,04,049.

Q. What is the number of Hindus, Muhammadans and Christians?

A. Christians 2,923; Muhammadans 1,02,440; Hindus and other classes 1,41,624. Other classes include such classes of people as Chamars. Sikhs are classed as Hindus.

Q. Others means non-Muslim and non-Christian?

A. Yes.

Q. Can you give us the deaths from 1—5, 5—10, 10—15 and so on?

A. In 1927 the total number of deaths are classified as under:

Ages	Males	Females
1—5	780	733
5—10	157	185
10—15	86	144
15—20	88	191
20—30	284	407
30—40	247	268
40—50	294	225
50—60	276	176
60 and upwards	657	557

These figures do not include the deaths under one year of age. The deaths under one year were: Males 1,224 and females 1,117.

Mr. A. Ramaswami Mudaliar: What were the total number of births in that year?

A. The total number of births in that year was 11,675 of which 6,023 were males and 5,652 females.

Chairman: What is the percentage of infant mortality amongst the different classes in that year?

A. The infant mortality per thousand is: Hindus 229, Muhammadans 171.1 and Christians 114.20. These are infants below one year of age. The figures are for Delhi city only.

Q. When was the Delhi Municipality formed?

A. The Delhi Municipality was formed about 15 years ago.

Mr. A. Ramaswami Mudaliar: Can you give us the figures of deaths as regards the age and as regards the sect of the people age by age?

A. That is rather a big job and we do not work it out. We classify these things under the headings prescribed by the Public Health Commissioner.

Q. For infants below one year if we can have the figures for Hindus and Christians and Muhammadans that will be helpful. For how many years can you give us those figures?

A. I will send you figures for 5 years.

Q. Is there any special ward in your Municipality in which infant mortality is highest?

A. Yes; Ward No. V. The deaths are among Hindus 8,674 and among Muhammadans 294.

Q. Can you tell us what class of people these are?

A. They are middle class people in that ward.

Mr. Kanhaiya Lal: What is the system of registration in the Delhi city?

A. The system of registration in force in the Delhi city is a dual system. One is by the customary sweeper of the house and the other is by the parents or guardians. The sweeper reports all cases of births to my clerk and the head of the house reports such cases to the same clerk. We compare the

two things and then we enter them in a pucca register. The one acts as a check on the other.

Q. Is there any obligation laid on the parents?

A. Yes; every birth should be registered.

Q. Is there any penalty for omissions to report?

A. Yes.

Q. Is the system working satisfactorily?

A. Yes.

Q. Have you got a column for the name of the child and marks of identification?

A. There is a column for names, but the names are very rarely given.

Q. Would it be possible to require the parents or guardians to make a supplementary report when the child is given the name, and enter it in the old register?

A. It is done even now, but very rarely.

Chairman: Do you know what the system is in rural areas?

A. I do not know the details, but I know that there is a system of registration. The Lambardar usually does the registration.

Mr. Kanhaiya Lal: Do you not think that there are omissions in the birth registers?

A. Very rarely we come across omissions. But in the case of deaths it is hopeless.

Q. Is there any checking system in the case of births?

A. There is no regular checking system. But we send the birth register to the Superintendents of Child Welfare Societies and they go about in certain areas and check them.

Q. How long have these registers been maintained?

A. For years; in my office we have got registers for the last 30 years.

Q. Have you got vaccinators under you?

A. Yes.

Q. Do they exercise an extra check in the cases of births?

A. The vaccinator takes the names of children from the birth registers and goes to the houses for vaccination.

Q. If they find that certain children have not been entered in the register do they make a report?

A. Yes; it serves as a sort of check.

Q. Why is infant mortality higher among Hindus than among other classes?

A. The first cause is early marriage. The second is premature births. Thirdly girls have not got the vitality to fight against nature. The first child among Hindus almost always dies.

Q. Do you keep any maternity registers where the ages of mothers are registered?

A. No.

Q. Have you got maternity hospitals here?

A. Yes; we have got three hospitals. One is the Victorial Zenana Hospital; another is St. Stephen's Hospital and there is one in Raisina.

Q. What do you mean by superstition being one of the reasons for infant mortality?

A. When a child is born they give the girl some herb called Gutti. That is a superstition. They keep windows closed to keep evil spirits out.

Mr. A. Ramaswami Mudaliar: There are 227 still births in 1927. What are they due to? Are they due to the mothers being married early?

A. No; it may occur at any age. Mostly venereal disease is the cause.

Q. 237 infants died within one week of birth. What is this due to?

A. It is due to lack of vitality.

Mrs. O'Brien Beadon: Do you find tuberculosis common here?

A. Yes; it is very common. I have had occasion to examine Muhammadan boys and Hindu boys and it is more common among Muhammadan boys.

Q. Do you find that deaths from tuberculosis are more common among Muhammadans?

A. Yes; as a result of investigations I carried on in schools I find it is so.

Q. Have you any special occasion of seeing children of early married mothers? Have you private work?

A. I had it in Bombay.

Q. Have you come across cases of early marriage at Bombay?

A. Yes.

Q. What were the ages of the girls?

A. About 13 or 14.

Q. Have you come across any cases of injury as a result of child-birth?

A. I remember one case in a Dhobi woman. She was 13 years of age. In the course of her married life she was completely lacerated.

Q. Have you met other cases?

A. That is the only case I remember.

Q. Have you seen cases of child marriage in which the mother and child were injured?

A. Yes, I have seen the mother injured more than the child.

Q. Was it among girl mothers or adult mothers?

A. In the young mothers it is very much more common. I have seen very bad lacerations and tears in young Hindu women, when I was Resident Medical Officer in the Lying-in Hospital at Bombay.

Q. From your experience do you think that motherhood at 14 or 15 is harmful?

A. Yes; it is harmful. The girl is not generally able to bear the strain. It is the cause of a number of deaths.

Q. Do you think that vitality is lowered permanently? Is it lowered more among people who have early child-birth than among people who have children at 18 or 19?

A. As regards loss of vitality it can be regained later on, but in the case of early mothers, they are left completely deformed.

Q. Are the parts disturbed?

A. Yes; there is laceration and so on.

Written Statement, dated the 8th October 1928, of Dr. G. J. CAMPBELL, M.D., W.M.S., Principal, Lady Hardinge Medical College, New Delhi.

1. The educated women in this province desire an advance in the age of marriage or of consent. All women I know wish that custom could be changed, so that cohabitation might begin later, as they realise the bad effects of early marriage and child-bearing. The law on the subject, as it fixes the minimum age for law-abiding people, has a great influence on custom.

2. (1) None.

(2) A girl of 13 is quite unfit for the functions of a wife and mother.

3. I do not know, as I have never had time to do medicolegal work.

4. (1) It has been effective among respectable people, who make up the great majority of the community. It strengthens the position of parents whose daughters begin to menstruate at 12, though puberty is not fully established then, but who do not wish to send their daughters to live with their husbands before the age of 13. Previously, in such cases, the parents-in-law more frequently claimed the girl at once, and to prevent a quarrel that might prejudice her position in her future home, she was allowed to go and cohabit at the age of 12.

(2) It has stimulated public opinion; even uneducated village women are now more distressed and apologetic than they used to be, when their daughters, aged 14 or less, are about to give birth to a child.

(3) Marriage is now more often postponed till after the age of 13, and the law of 1925 has helped in this direction. Cases within the married state are rarely brought to law, as no one, with a regard for the girl's welfare, would consider it conducive to her future happiness, that her husband, on her evidence, should be prosecuted and imprisoned or fined. They would only try to prevent a recurrence of the offence. Even so, the law is useful in making it less difficult to prevent a recurrence or, still better, a first offence.

5. See after 6.

6. (1) It is difficult to say, as cohabitation before puberty is considered discreditable, and would not be admitted. Many patients from Indian States declare emphatically that it has occurred in their case.

(2) Soon after puberty is very common among the higher Hindu castes.

(3) This is not admitted by people who know the law. One is often told by the parents of girls brought for treatment that the latter have cohabited before the age of 13, but a reference to the Age of Consent law makes them put their daughters' age up a year or two.

5. Usually at 13, often at 14, exceptionally at 12 or 15. There are individual but not communal differences.

7. I do not know.

8. Garbadhan here means the ceremony performed when pregnancy is known to have occurred. Among Brahmins and Kshatriyas in this province, the marriage ceremony is often performed before puberty is due to occur. Not less than four days after the first menstrual period is over, there is a ceremony called Muklawa, to celebrate the attainment of puberty, and the commencement of cohabitation.

9. No. Cohabitation, with the possibility of child-bearing 9½ months thereafter, should not occur before the age of 18. This would be four to five years after puberty. This is common among the Sikhs, and is one reason for their fine physique. 16 would be very much better than 13.

10. Not before the age of 16 at the earliest.

11. Apart from venereal disease communicated, in this way, to young girls, making them liable to sterility or the bearing of dead or diseased children, I have seen several cases in which serious injury was produced. One of these may be related in detail, as it was not illegal according to the present law. Early in 1921, when I was in charge of the U. P. Government Hospital for women in Agra, a Brahmin girl was admitted to the hospital, in a dangerous state of collapse. Her age was 13, and her general development was good, but she had not attained puberty. Her husband, a Brahmin cook, happening to find her alone in a room, had forcible intercourse with her. The upper part of the vagina was torn through into the peritoneal cavity, and there was severe internal hæmorrhage. The relatives brought her to hospital because they thought she was dying. So did we for a time, but with treatment she gradually rallied and recovered. Has the injuries been less serious, it is unlikely that the girl would have been brought to any qualified medical woman. She would probably have been treated by an indigenous dai.

12. I must have attended more than a thousand Hindu girls for child-birth at ages from 12½ to 16½ years, and the bad effects seen in them, and in others under observation or treatment, as the result of this early child-bearing, can hardly be exaggerated. For instance—

(a) Tuberculosis very often develops during pregnancy or lactation, as the resistance of the tissues is lowered by a strain unnatural at so early an age. This is one reason why tuberculosis is much more common among girls than among boys in India.

(b) In North India osteomalacia (softening of the bones) often develops. Before a girl's own bones are fully ossified (this is not complete till the age of 25) she has to produce lime salts for the bones and other structures of the developing child. If her diet or other circumstances are not satisfactory, her bones become soft, so that permanent deformities result, and spontaneous fractures occur, and the pelvis falls in so that natural delivery of the child is impossible, and unless it is removed by abdominal operation the girl dies. There were 27 such births, for osteomalacia alone, in this hospital last year.

(c) Apart from disease, these very young girls often look, and in effect are five to ten years older after their first child is born.

If the mother is immature, her child is of necessity below par in vigour, in power to resist disease, and in weight. The last of these can be easily compared. The average weight at birth of babies born in Calcutta is 5 lbs. 11 ounces, here it is slightly over 6 lbs., in England it is 7 lbs. If the family system has broken down, as is now common in cities, the mother is too young and inexperienced to take care of her child satisfactorily. These factors certainly contribute to the excessive infantile mortality in India.

13. See reply to question 1.

14. Other things being equal, no mother, having herself endured the pangs and strain of child-bearing, desires that her daughter should early experience these, and fathers are, if possible, even more tender-hearted where their daughters are concerned. See also the reply to question 20.

15—19. These questions are not within the scope of my experience.

20. I consider that legislation fixing the minimum age of marriage is much to be preferred, for the following reasons:—

(1) After the marriage ceremony has been performed, the relatives-in-law, with whom it is undesirable to quarrel, consider that the girl belongs to them, and are apt to exercise pressure, at times in spite of the law, to have her sent too early to take up her position as a wife. They may do this—

(a) if they are poor, and require an extra hand to help with the housework,

(b) if they are afraid that the youthful husband is in danger of falling into immoral habits,

(c) if they are afraid that the girl may be losing the passivity and submission to authority that are considered essential in a daughter-in-law,

(d) The relatives-in-law sometimes do not play fair. During a visit to them, arranged only in order to allow the girl to become acquainted with the people among whom she is later to live, cohabitation sometimes takes place.

(2) The age of marriage is much more easily regulated than the age of consummation.

(3) The educated women in this province, of all races and castes, desire that the marriage age should be raised. The orthodox Brahmins and Kshatriyas would probably object to either alternative but more so to raising the marriage age, as they seem
• to consider it a sacred duty to give their daughters in marriage

at an early age. On the other hand, they are the people among whom an advance is most urgently needed, because, in their case, defective diet, combined with the habit of secluding their women, makes early consummation of marriage particularly harmful.

21. The evil effects, on the girls concerned, and on the race as a whole, are so great and are already so widely recognised as evils, that the time is now ripe for raising the age of marriage or consent.

Oral Evidence of Dr. G. J. CAMPBELL, M.D., W.M.S., Principal and Professor of Midwifery and Diseases of Women, Lady Hardinge Medical College, New Delhi.

(Delhi, 10th October 1928.)

Chairman: How long have you been the Principal of the Medical College?

A. For 7 years.

Q. During the last 5 years have you reason to believe that there has been a large number of cases of cohabitation below 13 which generally do not see the light of the day?

A. Certainly in the Indian States. We get patients, among others, from these, and they are quite frank about cohabitation having taken place before the age of 12. I do not know of many cases in British India.

Dr. Beadon: In answer to question No. 11, you have given us details about one case and you say "I have seen several cases in which serious injury was produced". Would you mind giving us any details that you may remember?

A. I have seen several cases of severe hæmorrhage, mostly in my early years in India. I remember details of two just now.

Q. Were they brought to you on account of hæmorrhage?

A. Yes. In the case of less severe injuries the girls are generally treated by indigenous dais.

Q. How many years have you been out here in India?

A. I have been in India for 27 years.

Q. Practising where?

A. I was at Madras for 17 years, at the headquarters of the U. P. Government for more than a year, then at Agra, then here in Delhi.

Q. In those two cases of severe hæmorrhage can you remember the age?

A. The girls were very young, between 12 and 14.

Q. Was that as a result of early consummation?

A. Yes.

Q. In your experience is it a fact that girl mothers have worse labours during child-births than adult mothers?

A. Yes, always, other things being equal.

Q. We have been told that girl mothers have smaller children and labours are easier.

A. I have found the labours more exhausting in young girls.

Q. Do you think that the vitality of the woman is sapped more if she becomes mother at a very young age than if she becomes mother at 18 or 20.

A. Certainly.

Q. Do you think that the nervous strain in those cases where the labour is bad is more than when the labour is normal and the girl is grown up?

A. Yes.

Q. Have you met any cases in which there was definite insanity or mental derangement as a result of early consummation?

A. I have found it often results in hysteria but not definite insanity.

Q. Is hysteria commoner in young girls than in elder mothers?

A. Yes, especially when they are expecting child-birth.

Q. One of the witnesses has told us that it was commoner in young wives who were sterile. Is that your experience also?

A. It is common also in young wives still childless. One of the minor advantages of having undergo the pains of child-birth is that it diminishes hysteria, but it is common among girls married before they are fit to become mothers.

Q. What do you think about the children of early mothers? Do you think, they are on the whole pretty well?

A. They are generally lacking in vigour. Many of the children die.

Q. What would be the percentage of survivals of the children of these child mothers?

A. As the death rate among all infants in India is 20 per cent., it would be about 40 per cent., in the case of babies born of very young mothers.

Q. At what age do they generally die?

A. Within the first year. The mothers often cannot give the children all the milk they require, so the latter have to be artificially fed, and in tropical heat it is difficult to keep milk good. The bottles have to be kept scrupulously clean, and artificial feeding is expensive. Poor people cannot afford it. The very young mother either has not sufficient milk, or can feed the child only at the expense of her own health and growth.

Q. Do you think, in the case of babies from these mothers, the mental development is less than in the case of babies from grown up mothers? Do you think they are more apt to breakdown at every stage physically or mentally?

A. Mentally as well as physically, since an infant's brain increases greatly in size during the first year. Neither as regards physical nor mental development, can the children obtain the same help as from a mature mother.

Q. In your answer to question No. 12 you say, there were 27 such births, for osteomalacia alone, in the hospital last year. In your experience is osteomalacia commoner among young mothers?

A. Yes.

Q. Are women married at the age of 18 not so likely to develop osteomalacia as younger girls?

A. They are less likely to do so, although it is possible to develop osteomalacia later, especially as ossification of the pelvic bones is not complete until 25. I have seen very few cases among Mohammedans, and none among Sikhs who marry later. It is very common among the higher Hindu castes who marry early.

Q. Do you get your patients only from the Delhi Province?

A. No: Patients come direct to us from places as far distant as the Frontier, and Calcutta, and Karachi, and the Central Provinces, partly because ours is the only hospital staffed by women medical specialists of the rank of University teachers, and partly because our family quarters are very comfortable.

Q. Do you think the marriageable age is less or more than in other parts?

A. It is later in North India than in Madras.

Q. What is the general age?

A. It varies in the different communities. Sikh girls are married about 19 or even later. Mohammedan girls when 16 or more. Among Brahmins and Kahatriyas the marriage of girls is common before puberty, and consummation takes place soon after.

Chairman: There are several causes of infant mortality. About 11 or 12 have been enunciated to us. How would you link infant mortality with early consummation? Would you make that as a chief cause or would you say along with the rest it is a cause?

A. I would say that, among others, it is an important cause.

Dr. Beadon: Some witnesses have told us that women are sterile because they have badly managed confinements. What is your opinion?

A. That is the case. They often get septic fever. One-child sterility is very common.

Q. Do you think that these young mothers suffer more from gonorrhoeal infection than grown up mothers?

A. Yes.

Q. Do you think that if an immature girl contracts gonorrhoea, she is likely to suffer more than a mature woman?

A. The younger a girl is the more difficult it is to eradicate.

Mrs. Nehru: Have you noticed in the case of young mothers that the first child is weaker than the latter children?

A. Yes.

Q. Does that mean that the mother picks up later, the harm done by early maternity is temporary and that the subsequent children have a better chance?

A. I think the later children are much better off. If the mother is well looked after, the subsequent children have a better chance.

Q. Have you even enquired from your patients whether they knew that such a law existed?

A. Even among town people many do not know, still less do the village people know about this law.

Q. Do you think that this law has influenced the people in any way?

A. Yes, I think so. It has had an influence on the city people.

Q. How have you been able to find that out?

A. By observation in my practice.

Q. Have you ever known or heard of an instance where any one delayed the marriage of their children because of the existence of this law?

A. I have never discussed the law with such.

Q. You say that you have attended more than 1,000 Indian girls for child-birth between 12½ and 16½ years. Do you keep any statistics regarding this?

A. There are statistics in the hospitals in which I have worked. I have attended more than 10,000 women in connection with child-birth, and I know that a large proportion of them were very young.

Moulvi Muhammad Yakub: Is there any difference in the time of development between Indians and Europeans?

A. Very little.

Q. At what age the bones of an Indian girl are fully ossified?

A. It is practically the same as in an English girl.

Q. Then would you like the age of marriage to be fixed at 24?

A. 24 is the ideal age for marriage even in India, but it would be out of the question to fix that age anywhere.

Q. What about climatic conditions?

A. These do not appreciably affect the time of ossification of the bones.

Q. Don't you think that according to the climatic conditions in India, a girl becomes mature earlier and she ought to be married earlier than an English girl?

A. There is no difference between a European girl brought up in India, and one brought up at home.

Q. Have you ever come across cases of premature cohabitation among Moslems?

A. Not within the marital state.

Q. Have you ever attended any Muslim girl between 12 and 16½ for child-birth?

A. I have attended at 16 and not before that.

Q. Do you get venereal diseases among women?

A. I am afraid I could not tell you that, without reference to our hospital records.

Q. Can you tell me how many cases approximately do you get in a year?

A. I am afraid I could not tell you that.

Q. In what class of women do you get such diseases?

A. There is a great deal among all classes, but poor women come into hospital most.

Q. What is the cause of these diseases?

A. Contact and heredity.

Q. Generally what is the age of the girls who suffer from such diseases?

A. The girls are generally young. They contract venereal disease soon after marriage, and the younger the girl is, the more serious are the results. Among the Komty Chetties in Madras, I have seen girls die of blood-poisoning from this cause, a month after marriage to an elderly widower.

Q. What is generally the age of the girl you take in your college?

A. 16 years. Our course for the I.Sc. Examination and M.B., B.S., degree lasts seven years.

Q. Do you take married girls also?

A. We hardly ever take a married girl.

Q. Are they not allowed to be married as long as they are in the College?

A. We could only advise the girls not to marry, and they practically never do so. The course is a very heavy one.

Q. Have you got any married girls?

A. We have.

Q. Have you had some occasion of child-birth among the students of your college?

A. I remember one occasion when a married student gave birth to a child.

Q. Have you had any case of venereal disease among your students?

A. One student had to leave the College on account of venereal disease inherited from her father.

Q. Do you think that there is the risk of increasing the immorality among the girls if the age of married is enhanced?

A. There would be difficulties of course. The young people might desire more freedom than their parents considered discreet. Among poor people, a girl, working in the fields, would need to keep beside her mother. I think that the parents of young girls could take all necessary precautions.

Q. Has there ever been any case of immorality among your students?

A. No, not one.

Mr. Bhargava: You said that among the Komty Chetties where the husband is disproportionately of greater age these cases are common.

A. Yes.

Q. Do you think that there is any essential connection between the disparity of ages and the venereal disease?

A. Yes.

Q. Do you think there should be a provision in the law that a girl of such and such age should not be married to a boy of over such and such age?

A. Yes, when there has been a period of widowhood.

Mr. Kanhaiya Lal: You are in favour of the age of consent being fixed at 16 at least. May I take it that there would be no injury if sexual intercourse is had with a girl of 15 years of age?

A. 15 is neither safe for the mother nor the child.

Q. In answer to question No. 4 you have said 'they would only try to prevent a recurrence of the offence. Even so, the law is useful in making it less difficult to prevent a recurrence or, still better, a first offence.' In what way will the recurrence of such a crime be prevented by the enactment of this law?

A. You can threaten to prosecute the husband.

Q. You have said that ossification is complete at 25. We were told by other medical persons that the growing ends of bones join at 18.

A. Before writing my reply, I took the precaution of looking up an authority on the subject. Besides, that is why, in England, 24 is considered the ideal age for women to marry.

Q. But ossification is sufficiently complete to have safe child-birth at the age of 16.

A. Yes.

Q. It has been said that tuberculosis is more common among Mohammedans than among Hindus.

A. I don't think so. Tuberculosis is equally rampant among Hindu women.

Q. Is this due to early marriage?

A. Yes, to a large extent.

Moulvi Muhammad Yakub: But you say that among the Muslims early marriages are rare.

A. They have the other contributory cause—purdah.

Mr. Kanhaiya Lal: Have you come across any case in which injury resulting from consummation before the prescribed age of 13 was brought to the court?

A. Such cases are never brought to court. People would be ashamed. I have had patients brought to me for treatment before that age.

Q. May I know if medical men and women will agree if they were made responsible for reporting any cases of the infringement of the law that may be brought to their notice. The interests of public policy require that a girl should be protected and cases of infringement of the law should be brought to light, taken up and punished. In the case of murders and in cases of poisoning the medical people have to report.

A. In the cases you mention there is corroborative evidence. The poison would have to be bought somewhere. In the case under consideration, there is only the word of the two people concerned. The parents-in-law might make charges against the girl's character, rather than have their son punished. If once the public knew that doctors would report such cases to the police, no patients would be brought to them for treatment in these circumstances.

Q. You mean that it is a domestic matter?

A. Yes. It would be inexpedient to require the medical profession to report cases of infringement of the law of consent. It would do more harm than good.

Q. More harm to whom?

A. To the girls concerned, by depriving them of medical treatment.

Q. Can you suggest any other measures for bringing these cases to light? The difficulty is that these cases do not come to light. The medical profession is not coming to our help, the parents are only too unwilling to send their sons-in-law into jail, they are the least interested in making complaint, how are the cases to come out?

A. There is only one way, fixing the age of consent as the age of marriage.

Q. But how are we to bring these cases to light?

A. That is utterly impossible.

Q. Could voluntary agencies, started by the public themselves, give any help?

A. Yes.

Written Statement, dated the 15th August 1928, of Mr. JUGAL KISHORE, President, Shri Sanatan Dharm Sabha, Delhi.

1. There is no dissatisfaction amongst the masses. It is only a limited number of educated people gifted with advanced views, that feel the necessity of making an advance.

2. The circumstances which justify retaining the Law as it is are:—

- (a) Want of desire for change on the part of those for whose sake the change is intended;
- (b) The ingrained habit of early cohabitation;
- (c) The fear of increase of sexual immorality amongst the boys or even that of unnatural crime;
- (d) Custom of early marriages, and
- (e) The legislature should interfere as little with social matters as possible;

The circumstances that urge for an advance are:—

- (a) The inability of the present society to improve itself in view of its division into so many castes and creeds and poverty of education in this respect;
- (b) The urgent necessity of removing all those causes that are adversely affecting the physical development of girls and their progeny;
- (c) The need for protection of girls at the hands of reckless husbands and unscrupulous debauchees, and
- (d) The growing freedom with which the female sex is coming into contact with the male sex under the influence of western education.

3. Such cases are very rare amongst the higher classes, but not infrequent amongst the lower classes.

The amendment made in 1925 seems to have produced no perceptible results chiefly because the masses are as yet unaware of it and partly because the intervening period is too small to admit of a sufficient time to draw any definite conclusions. It stands in need of a better promulgation than publication in official Gazettes and Law-Books.

4. The answer to Question No. 3 covers an answer to this question as well.

5. The usual age of attainment of puberty in this part of the country is about 12 to 13 years. The Sabha does not possess sufficient data to say if it differs in different castes to any appreciable difference.

6. So far as the Sabha is aware of, the number of cases of cohabitation before puberty is negligible.

Those of cohabitation soon after puberty are not frequent.

Normally it is about the age of 13 years that the cohabitation is started amongst the masses. But the educated and advanced generally do so mostly after 13 years of age.

Such cases, even if they do occur, seldom come to Court.

7. The religious injunctions confine themselves to the age of marriage and the duty of a husband to perform "Garbhadan" whenever a physically fit wife requests him to do so.

They don't fix any age-limit.

8. "Gaona" or "Garbhadan" ceremony is usually performed and amongst most of the classes it coincides with the consummation of marriage. It is performed after the attainment of puberty, generally at about the age of 13 years.

9. Under normal conditions attainment of puberty is a sign of physical fitness for consummation of marriage. But the present day physiques of girls falsifies this sign to a great extent.

It is difficult to say at what particular age consummation may take place without risk of injury to the girls or their progeny. Much depends upon the constitution of a particular couple. Ordinarily no injuries are suffered if consummation takes place at or after 13 years of age.

10. Barring the limited number of girls that moves in Male-society, in most cases the girls in India become competent to give an intelligent consent at a fairly late stage—say at about 15 or 16 years of age. This however does not apply to the case of husbands, as they stand on an entirely different footing.

11. The Sabha is not aware of any of such cases.

12. Early consummation (i.e., consummation before attaining physical development) obviously contributes to high maternal and infantile mortality along with the scarcity of nourishing food-stuffs, poverty, insanitary habitations and the like. It is equally evident that it also more or less adversely affects the physical and intellectual progress of the people.

13. *Vide* answer to Question No. 3.

14. It is true, that women generally lean towards early consummation, but it is equally true that in most cases they are prevailed upon by men.

15. *Vide* answer to Question No. 3. Difficulties are likely to be experienced in determining the age. The best measure that suggests itself to the Sabha to minimise these difficulties is, that the birth-register entries should be revised some time after they are made with a view to ascertain the correct names of the children whose birth has been recorded. This would meet the great difficulty of fixing the identity of a child from the birth-register entries. At present such registers either do not mention the name of the newly-born child at all or only a fictitious name, for the simple reason that children are given no names by the time the report is made and thus these entries are often rendered valueless. If this defect is removed, those entries would be very valuable in determining the age.

16. It is more for Doctors to say, if it would. As a layman it seems, that to raise the age of consent to 14 years could not materially do so.

17. Yes. The nature of extra-marital and marital offences are so divergent that it is advisable to separate them. The moral depravity and seriousness of the consequences demand a severe punishment for the former. On the other hand a severe treatment in the case of the latter may mean a ruin of the family-peace for ever. The very fact that it is an offence acts as a great deterrent to respectable family-men. The imprisonment in such cases may be only simple and may extend to one year while in the case of former, the provisions for punishment should be retained as they are.

18. The trial in the case of marital offences may be held *in camera* to avoid unnecessary shame to the family. The procedure may be the one prescribed for summons-cases, but it should be triable only by a Magistrate of the first class, so that the accused may have the benefit of a trial by an experienced Magistrate. The trials may not be held in Session Court, as holding a session leads to a greater publicity. The procedure in the case of non-marital offences should be kept as it is.

19. The Sabha is not in a position to venture any suggestions.

20. The Penal Legislation fixing a higher age of consent for marital cases is likely to be more effective. It may even cure the evil of early marriage to a certain extent.

21. As already remarked in answering the first part of question No. 2, it is always a sound principle to leave such matters to Social Reforms by means of education and social propaganda. The Legislature should always hesitate to trespass into this domain.

But the progress by social reforms is likely to be very tardy under the present circumstances and if legislature just lends a helping hand to the social propaganda, far better results may be expected.

Oral Evidence of Mr. JUGAL KISHORE, President, Shri Sanatan Dharm Sabha, Delhi.

(Delhi, 10th October, 1928.)

Chairman : You are President of the Sanatan Dharm Sabha, Delhi?

A. Yes.

Q. What is the membership of that body?

A. 200.

Q. How long has it been in existence?

A. 3 years.

Q. Is this the opinion of the Sabha or your own?

A. Mostly my own.

Q. It has not been deliberated upon by the Sabha?

A. The answers have been deliberated upon by the managing committee of the Sabha.

Q. Then it can be taken as the opinion of the managing committee?

A. Yes.

Q. You have given pros and cons in para. 2 about the amendment of the law for and against the advance. What is the view of the Sabha; is it for an advance or against it?

A. In favour of gradual advance.

Q. Are you prepared for an advance at the present stage?

A. Yes, to 14 years within marriage and 16 years outside marriage.

Q. Your age of puberty is 12—13 years. Is that correct?

A. I think so.

Q. What is the age of marriage?

A. It varies from 10—11 to 17—18.

Q. What is generally the age of marriage? Is it before or after puberty?

A. In some cases it is before puberty and in others after puberty.

Q. Is it a large number who marry their girls early?

A. Mostly the marriages take place about the age of 12 or 13.

Q. Do you think that consummation takes place soon after?

A. Not in many cases, generally in the third year.

Q. Then consummation takes place at 16?

A. Yes.

Q. Do you consider that also to be the age at which intelligent consent can be given by a girl?

A. The difficulty is that the girls are not educated and are unable to protect themselves or to realise the consequences. It is therefore very difficult to say whether at the age of 16 they have sufficient intelligence.

Q. Have you any reason to believe that there are a good number of cases of actual consummation of marriage before a girl is 13?

A. Not many.

Q. If in fact consummation takes place so late as 16 what is the reason for making a change in favour of 14?

A. In order to bring those classes who are not advanced to that stage. This is for those classes where marriage takes place at an early age and consummation takes place at 12 or 13.

Q. You are of opinion that fixing a higher age of consent would be more effective than penalising marriages?

A. Yes.

Q. Do you think if the age of consent is raised to 16 it will enhance the period of marriage?

A. The difficulty is that the time which has elapsed since the amendment is so little and the promulgation which this Act has received is so little.

Q. You want the age of consent to be raised to 14 *plus* publicity?

A. Yes.

Q. You say that the raising the age of consent only will prevent marriages?

A. Yes, in those cases where early marriages take place for the purpose of consummation.

Q. You say consummation takes place generally at 16?

A. If consummation is not to take place before 14 there will be no marriage before 12.

Q. Is that all you want?

A. Yes.

Q. But you said even now the marriages takes place at 12 or 13?

A. It is only for those cases in which it is not.

Mrs. Nehru: May I take it that you modify the statement you made in answer to Question 6 that now seems cohabitation takes place at 13? Your view to be that cohabitation takes place at 16?

A. In the lower classes it is 13 but in the case of advanced classes it is 16.

Q. Can you give us any instances of girl mothers at 14 because after 13 you say no injury takes place?

A. Yes, they do become mothers at 14.

Q. You mean to say that in such cases there is no strain on women?

A. No. We mean there is no immediate injury.

Q. But do the mother and child suffer in any way at all.

A. Her vitality suffers.

Q. What is your remedy then if the girl mother suffers by early consummation?

A. Gradual raising of the age for consummation.

Q. Now we have been told by several witnesses that the age of consent has so far not been effective. Probably it is not known but it has not been effective because it is a secret act and it is not easy to know and prove it. What is your opinion about this?

A. There is some force in it but in most cases it is known after the act is repeated several times.

Q. It is only by motherhood that it becomes public?

A. That depends on the state of the society. Generally the couple do not reside separately; they are living in a joint family. So there is always a chance of discovery.

Q. Can you explain why such cases within marital relations have not come to court?

A. Because people do not like to go to court.

Q. But do you think they would like to go to court if the age is raised to 14?

A. No, but the publicity of the fact that the age has been raised and it has been made an offence will create a sort of idea in their minds and they will not do it.

Q. You think raising of the age and publicity will have the desired effect?

A. Yes.

Q. In the opinion of your Sabha what age is considered safe for motherhood?

A. It is difficult to say that.

Q. Supposing medical opinion is in favour of 16 as the least age when it is possible for a girl to become a mother without bad results would you still fix the age of consent at 14?

A. Yes, for the simple reason that a gradual change can be acted upon easily by the masses but if the change is sudden the difficulties are bound to occur.

Mrs. Beadon : Do you think if marriage age is fixed at 14 or 15 there will be great deal of dissatisfaction?

A. Naturally there will be some amount of dissatisfaction among the lower classes.

Q. Would it be a great deal?

A. No.

Q. This dissatisfaction will show itself in what way?

A. It is very difficult to anticipate the form it will take.

Q. You say in answer to Question 12 that early consummation is the cause of high infant mortality. Can you give us any cases which have come to your personal knowledge of young mothers having died or children having died?

A. Yes, there are several cases.

Q. How many?

A. I think about half a dozen within the last five years.

Q. Of girls married at what age?

A. At about 13 or 14.

Q. Did the girls die on account of child-birth?

A. Yes.

Q. What were those girls—Hindus or Mohamedans?

A. Hindus.

Q. Of what caste?

A. Middle class.

Q. What about their children? Did they survive or did they die?

A. In most cases they died.

Mrs. Brijlal Nehru : Do you think one of the causes why these cases have not come to court is that there is very heavy punishment provided for the offence?

A. The idea is that if the matter gets publicity it will bring shame and dishonour on the family.

Q. You have suggested reduction of punishment. If high punishment is not one of the causes for the failure of this law why have you suggested this change?

A. I have suggested it because after punishment the family is generally ruined.

Q. If that is the case don't you think it is one of the causes why such cases do not come to court?

A. Yes, that is one of the reasons.

Q. Therefore you think reduction of punishment in marital cases is good?

A. Yes.

Q. You have suggested one year's imprisonment or fine. Would you make punishment graded?

A. That should be left to the discretion of the court.

Q. At present up to 12 it is 10 years and between 12 and 13, 2 years.

A. It will be better if the matter is left to the court.

Q. Up to what age have you suggested one year?

A. That is without reference to any age.

Mr. Mitra : You say that your Sabha is for fixing the age of consummation at 14. What is your personal opinion?

A. I am for a change but it should be gradual. The standard varies in different classes and you cannot fix one standard for all.

Q. If there is any change do you think there will be agitation?

A. Yes.

Q. You think there will be no agitation if a higher age is fixed for non-marital cases?

A. No.

Q. What age would you fix for non-marital cases?

A. 16.

Q. Girls illiterate as they are and mostly confined to the family don't you think that the age of discretion to understand these matters should be higher?

A. To a certain extent.

Q. What do you think personally should be the age?

A. 20.

Mr. Mohd. Yakub : You have stated in your statement that Sabha wants this thing and Sabha wants that thing. In reply to a question you have said that this statement represents the views of the managing committee. Therefore wherever you mention Sabha you mean managing committee?

A. Yes.

Mr. Bhargava : If there is a notion in the minds of Hindus it is not in regard to the age of consent but it is in regard to age of marriage and if the age of marriage is fixed at 14 and the age of consent is fixed a little higher there is no reason to think that there will be great dissatisfaction?

A. I expect dissatisfaction because a sudden change is bound to bring about dissatisfaction although it may not be actuated by any reason.

Q. But as you think there are no Shastric injunctions that consummation should take place at a particular age, will not this dissatisfaction be absolutely negligible?

A. Shastras do not enjoin any age for consummation and therefore from religious point of view there can be no justification for any agitation but in the present circumstances a sudden change would create dissatisfaction among the masses.

Q. By masses you mean citizens of Delhi or you mean rural areas also?

A. We are speaking mostly of the town.

Q. Are there any social reform organisations in Delhi?

A. Yes.

Q. Generally speaking the standard of literacy is greater in Delhi than in other rural areas.

A. Yes.

Q. And comparatively speaking you are of this opinion that the marriageable age or the age of consent if it is raised will be better received in Delhi than in rural areas; is it so?

A. Yes.

Q. You have said that if maternity comes at the age of 14 there is a risk of injury to the girl and to the progeny of that girl. Is that also not a national loss?

A. Yes.

Q. On the contrary you say that there will be some dissatisfaction if the age of consent is raised to 16?

A. I have already said that we are for a change by gradation. It may not be raised at once from 12 to 16.

Q. You think the amount of agitation is such that national interests may be sacrificed?

A. Yes.

Q. Have there been any meetings in Delhi in respect of this Gour's amendment bill?

A. Not to my knowledge. People here little know about these Bills.

Q. You have no means of ascertaining the amount of dissatisfaction that exists?

A. From the views of the people I think there is agitation.

Q. On no occasion do you remember that any meeting of Sanatan Dharm took place at which such questions were debated?

A. In two or three meetings.

Q. Did they record any resolutions in respect of these ages?

A. I think they did.

Q. You have said that so far as crime of rape is concerned you would prefer that the highest punishment may be one year as you are opposed to any estrangement between husband and wife. Don't you think even one year's punishment may bring that estrangement?

A. It does not mean that maximum will be given in all cases.

Q. So you think in the interests of society even if in a particular case there is hardship that must be tolerated?

A. Yes.

Q. Do you not think that there has been no dissatisfaction for the last 30 years when the punishment has been 10 years and transportation for life?

A. Not to my knowledge.

Q. You have said that this consent law will be more effective than the Sarda's Bill. Can you give any reason to support it?

A. So far as the question of marriage is concerned there are other considerations as well. Sometimes parents wish to marry because the child has lost the mother. Sometimes they want it for the purpose of management but when they find it difficult to go on without consummation for a long time and consummation at an early age is an offence, naturally the result would be that the marriage would be postponed.

Q. Do you think the chances of detection of crimes of marriages are greater than detection of crimes relating to breach of consent?

A. Yes.

Q. Don't you think the law will be a dead letter unless in case of proved injury or proved maternity?

A. Yes.

Q. So you would like to have both these laws in operation?

A. Personally I am in favour of both but the Sabha does not like the Sarda's Bill.

Q. Did your Sabha decide this in any resolution?

A. I think they did not like the Bill. It was discussed at the time when this Bill was being discussed.

Q. Was Sarda's Bill sent to your Sabha?

A. No.

Q. In answer to Question 2 you have given a number of circumstances which justify retaining the law as it stands and a number of circumstances which are for an advance. Are these theoretical reasons or are actual facts in practice?

A. They are actual facts.

Q. At what age does consummation take place among boys now? What is the age of marriage of the boys?

A. They are married at 18 among the advanced classes and amongst the masses at about 14 to 16.

Q. Up to what age you think they can be left safely without fear of immorality?

A. Up to 20.

Q. Till 20 years there is no fear of immorality?

A. Of course barring exceptional cases.

Q. Would your Sabha be against marrying a boy of 20 to a girl of 15 or would the difference in age be considered too small?

A. That is generally the difference.

Q. So if we raise the Age of Consent to 15 the danger of immorality among the boys does not arise at all.

A. There will be no great danger.

Q. Do you differentiate between boys of lower classes and boys of the higher classes and say that boys of the lower classes are likely to be more immoral?

A. Yes.

Q. Do you think that the fact that a boy of the richer and advanced class can command money and can command other things does not go to make him more immoral?

A. In that case he has more chances of getting immoral.

Q. Have you any experience of boys of lower classes to say this of them?

A. They object to the raising of the Age of Consent because they fear that if it is raised suddenly the boys may become immoral.

Q. Do you mean to say that the advanced classes fear on behalf of the lower classes that if the age of marriage is raised boys of the latter classes may become immoral?

A. No; I do not put it on that ground. The difficulty is that the change in their case would be greater.

Q. As regards punishment, you suggest that the punishment should be one year, and one of the reasons you have given is that otherwise the family would be ruined. Do you seriously think that if a husband goes to jail for 2 years he will not come back, but that if he goes to jail for one year he will come back and be reconciled to his wife?

A. In my opinion the greater the period of punishment the more the gulf between the husband and the wife. If it is one year I think the chances of reconciliation are greater.

Q. You say that it is an offence which acts as a deterrent to respectable family men. Would you call people of the lower class respectable family men?

A. Yes; they are respectable in their own society. I am speaking of people in relation to their own neighbourhood and environments.

Q. At present the punishment is transportation for life if the girl is below 12 and 2 years if she is above 12. Would you reduce this punishment to simple imprisonment?

A. There are really very few cases where cohabitation below 13 takes place.

Q. The law itself has recognised the exceptional nature of the offence and has therefore instituted graded punishments. Do you want to substitute one year's simple imprisonment in all cases?

A. Yes; above 12 years it can be less than one year at the discretion of the magistrate.

Mr. Kanhaiya Lal : How long have you been practising?

A. I have been practising since 1910.

Q. To what community do you belong?

A. I belong to the Kayast community.

Q. Do you think that the time has now arrived for the revision of the existing law?

A. As I have stated the difficulty is that the Act has received very little publication and it has not created any appreciable change.

Q. Then, is the necessity not yet felt for the revision of the existing law?

A. I have said that people will not be dissatisfied if it is raised to 14 because the increase is so little.

Q. How you would adjust the revision? Would you make it advance with public opinion or would you leave it to social reformers in the country?

A. I would leave it to social reformers in the country.

Q. Do you think that the age limit of 14 will sufficiently protect girls and the progeny from physical deterioration?

A. I suggest it only temporarily for a short period. If people are prepared to have it raised it can be raised.

Q. But you said that the revisions should be according to the reformers of the country.

A. By means of instalments, of course.

Q. If 14 is not sufficient to protect girls, would you require that in the interests of the country a higher age limit might be fixed so as to reduce mortality?

A. Social evils cannot be cured by one stroke. If they are cured by one stroke, that will create agitation. To avoid agitation it is necessary to advance step by step.

Q. Cases of intra-marital offences are not brought to light. Beyond publicity which you have already mentioned, can you suggest any other method of making it effective?

A. None.

Q. You have suggested that the cases should be made cognisable. Would you like to create vigilance societies or authorise communal panchayats to take up vigilance work with reference to these cases?

A. It is difficult to expect anything out of them.

Q. Do you mean to say that the Sabhas are so apathetic or unwilling to take up this work that it would be difficult to work?

A. Those who constitute the Sabha belong to the same community as the parties concerned, and they will not bring cases against their fellow caste-men.

Q. Can you expect anything of social reform organisations?

A. That you can do.

Q. Do you think that communal organisations will be helpful?

A. No; I do not think.

Q. A suggestion has been made that in order to inspire public confidence we might institute matrimonial courts. Suppose we have matrimonial courts to try these cases, do you think that there will be reluctance on the part of the public or will these cases come to light?

A. I do not think that these courts will bring cases to light.

Q. Will it inspire confidence in the public and expedite the decision of these cases?

A. Certainly it would expedite the decision of these cases.

Q. For the purpose of efficiency and public confidence, would you like these matrimonial courts to be purely non-official or mixed?

A. Barring a few men of advanced views, few men like to go to courts. It is not because that they have not got confidence in the courts, but there are other considerations.

Q. Then do you think matrimonial courts would make any difference?

A. No; I do not think they will make any difference.

Q. Supposing we have a marriage law, i.e., a law fixing the age for marriage, would you then be in favour of registration of marriages?

A. Yes; it will be helpful in proving cases where there is great difficulty in determining the age.

Q. Would you place the obligation of reporting these marriages on the parents or guardians, or the priest, or on both the parents and the priest?

A. It would be better to place the obligation on both the parents and the priest. That will help verification.

Q. To whom should the reports of these marriages be made?

A. Municipal bodies would be better.

Written Statement, dated the 9th August 1928, of Mr. PIYARE LAL, Advocate, President, Bar Association, Delhi.

1. Yes. Cases of seduction are more numerous now than they used to be before and to maintain a difference of one year between the ages for cases of extra-marital and marital offences is regarded objectionable. In cases of extra-marital offences the Age of Consent should be sixteen years and punishment more severe.

2. The Age of Consent in marital cases may be maintained at 13 years as it is now, because the orthodox Hindus are opposed to any further extension, but in extra-marital case it should be raised to sixteen years.

3. Yes. The amendment has made no change. Raising of Age to 16 years is recommended.

4. The amendment has not been effective in cases (1) and (3) but it has been effective in case (2).

5. In the town of Delhi girls of superior classes usually attain puberty at the age of 14. This is the case in the towns generally, while in villages the age is 16.

6. It is common, soon after puberty. Rarely any cases comes to the Court.

7. I cannot say if there is a religious injunction to that effect but the general idea and practice among the Hindus is to allow consummation soon after puberty.

8. *Goana* ceremony is not performed in Delhi and after marriage the wife is allowed to live in the husband's family though consummation takes place after puberty.

9. No, I think sixteen is the proper age.

10. At Sixteen.

11. It is common knowledge in my town that early maternity results in injury to the mothers and children in health; and death rate in such cases is high.

12. Yes.

13. Certainly it is general in extra-marital cases.

14. Not generally.

15. Yes. Medical opinion in such cases is generally vague, uncertain and at times contradictory, and even examination by X-ray has not given much help. The Municipal and village registers of birth are not kept carefully and alterations of entries is not uncommon. A better verification, control and custody of birth registers is suggested.

16. No.

17. Yes. For extra-marital offences, transportation for life or imprisonment of other description for ten years and fine. For marital offences imprisonment of either description for 2 years or with fine or with both.

18. Extra-marital offences to be triable by Court of Session. Marital offences by Presidency Magistrate or Magistrate, 1st Class.

19. None.

20. Neither of them will be effective.

21. I do not think penal laws will be effective. The spread of education and progress of social reform by propaganda has already done good work and is likely to prevent and reduce the evil.

The Digambar Jain Aggarwal Panchayat of Delhi in July last have passed under my presidentship a resolution unanimously prohibiting marriage of girls and boys under the age of 14 and 18 years respectively; the penalty provided being *ex-communication* from the Panchayat. This will have more deterrent effects than penal laws. Early marriage and early consummation are not favoured now and in a few years will become very rare.

Oral Evidence of Mr. PYARE LAL, Advocate, President, Bar Association, Delhi.

(Delhi, 10th October 1928.)

Chairman : How long have you been at the bar?

A. 48 years.

Q. Are you connected with any social reform institution?

A. No.

Q. Do you know about the conditions in the villages or do you know about the towns only?

A. I know of the villages as well.

Q. You have said superior class girls attain puberty at the age of 14 years. Is that right?

A. That is the usual age.

Q. In villages the age is 16.

A. Yes.

Q. The present Age of Consent for marital cases is 13. Are you satisfied with the existing state of law which permits cohabitation before puberty?

A. My objection is that there is a large community of orthodox Hindus and they object to any interference in that respect.

Q. Which orthodox Hindus are these? What Classes?

A. They are the advanced class of people, Arya Samajists and others, they are the Sanatanists who stick to the old rule. They believe that interference in the domestic life of the people is not desirable.

Q. Is it because of the orthodox opposition only that you would not advise a change?

A. Yes, that is the only reason.

Q. Is what you state in answer to Question No. 11 namely early maternity results in injury to the health of mothers and children and death rate is high in such cases, within your personal knowledge?

A. Yes.

Q. Then again in answer to Question No. 12 you say "yes".

A. I myself see every day that so many women have child-birth at the age of 14. The instances are too numerous to remember and count.

Q. Yet you think that we should not interfere in a matter like this simply because the orthodox people are against it? We should stop at 13?

A. Yes.

Q. In answer to Question No. 20 you have said neither the law of Age of Consent nor the law fixing the minimum age of marriage will be effective. Supposing a law is enacted preventing girls being married at all till 14 or 16, as is proposed by Sardar's Bill, why will it not be effective?

A. People who celebrate these marriages are rich people. In Alwar State where this law has been passed a fine is imposed on those who break the law. The fine is paid away and the law is evaded. It is only the imprisonment that may act as a deterrent. But imprisonment is seldom given. Imprisonment will not at the same time be feasible.

Q. Why not? If there is a law preventing marriages and if there is imprisonment provided for its breach the man can be sent to jail. Why do you say it will be ineffective?

A. It has not been effective in Indian States where this law has been passed. I know of Alwar.

Q. Is the punishment provided imprisonment or fine?

A. I don't know whether they have provided imprisonment as well. I am sure the law will not be effective even if we provide imprisonment.

Q. Do you say, as a matter of fact, that the present law is ineffective?

A. It is ineffective.

Q. Would you like it to be abolished therefore? Would you like to make it effective or ask for abolition?

A. I do not ask for abolition. But I think it is ineffective. The real remedy is social propaganda. The Digambar Jain Aggarwal Panchayat of Delhi has passed a resolution prohibiting marriage of girls and boys under the age of 14 and 18, and the penalty provided is ex-communication from the Panchayat. It is this sort of work that can achieve the object.

Q. What is the number of Digambar Jain Aggarwal in Delhi?

A. There are about 6 hundred families, i.e., about 3 thousand people.

Q. At what age do marriages generally take place amongst them?

A. When the age is about 13 or 14.

Q. Now are marriages prevented below 14 and 18?

A. Yes.

Q. Do you know of any cases of ex-communication?

A. No; the resolution about ex-communication was passed only last July.

Mr. A Ramaswami Mudaliar: Do you belong to the Jain sect?

A. Yes.

Q. Did you preside at the conference at which the resolution fixing the age of marriage of girls was fixed at 14?

A. Yes. The reason for passing such a resolution is this: My community is opposed to widow marriage. It was found that by merely fixing the age of marriage you do not strike at the root of the evil of early widows. Therefore the penalty of ex-communication was provided so that early marriages may not take place.

Q. Is it not true in the case of the Hindus also?

A. As far as Delhi is concerned, they have widow marriages.

Q. Is it practised to a large extent?

A. The numbers are increasing.

Q. Is it due to social reform or general custom?

A. It is due to social reform. I know that about 200 marriages took place amongst the Agarwal Vaishnavas. Amongst the Katris I remember 4 or 5 marriages and amongst the Kayastas I remember 3. In Delhi the tendency for widow marriage is increasing.

Q. Do you think that Hindus permit widow marriages?

A. Yes; they are taking place amongst Hindus.

Q. Is there any special reason why you do not want to penalise early marriages amongst Hindus?

A. I would leave it to social reform rather than bring in a penal legislation.

Q. Are there orthodox people amongst Jains and do they believe in early marriage or pre-puberty marriage?

A. No.

Q. Then where was the necessity for this conference and passing the resolution?

A. Because we have no widow marriages, our object in passing the resolution was to strike at the root and prevent early widowhood.

Q. So far has early marriage been the custom in your community?

A. Not for the last 10 years at least.

Q. You seem very solicitous about orthodox Hindu opinion. Have you any mandate from the orthodox section of the Hindu community to say so?

A. No; I have only expressed what the general opinion is.

Q. You say in answer to Question 11 that you have come across cases of early maternity resulting in injuries and that the death rate in such cases is high. If that is so, will you still not increase the age of marriage?

A. I would leave it to social reform.

Q. You might have come across social reform organisations during the past half a century. Do you think that results have been appreciable?

A. I think so. Within the last 10 years they have done a lot of work. Formerly the results were not significant. But in the last 10 years the organisations have gained strength and have shown good results.

Q. Do you know of any community in Hindus in Delhi where early marriages are prevalent?

A. I do not think early marriages are common in Delhi amongst Hindus.

Q. What is the age of consummation here?

A. It will be between 14 and 15. It is always after puberty.

Q. Consummation before 14 is exceptional?

A. Yes.

Q. If that is so, why do you think orthodox opinion will be very much annoyed if 14 is fixed as the age of consummation?

A. It will affect their sentiment. Amongst them there are forward people like the Arya Samajists, but there are others like the Sanatanists who still hold to old opinions.

Q. Is there any law amongst the Hindus regarding the age of consummation?

A. There is about marriage but not about consummation.

Q. Supposing we do not fix the age for marriage but only for consummation, do you still think that orthodox opinion will be against it?

A. Yes; because if marriages take place earlier, consummation will also take place earlier.

Q. Do you mean to suggest that if marriage takes place at the age of 10 consummation will take place immediately after?

A. Yes. Such cases do happen.

Q. But will not the law punish the offender?

A. But nobody cares for the law.

Mr. Bhargava : Do you know that there is a Sanatana Dharma Sabha here at Delhi?

A. Yes.

Q. Do you know if they have passed any resolution for or against the Age of Consent?

A. As far as I know they are opposed to the raising of the Age of Consent.

Q. Have you attended any meeting of the Sanatan Dharma Sabha?

A. No.

Q. Do you know if there is any resolution on the subject?

A. No.

Q. Then what is your warrant for saying that they are opposed to the Age of Consent?

A. I have come across many of my friends here who are members of the Sabha and they told me so.

Q. About this law of yours about ex-communication, do you not think that the penalty imposed is very harsh?

A. It is not harsh at all.

Q. May I then know what the nature of your repugnance to this social law of ours is?

A. In our opinion such things as these should be left to the society to be dealt with and not to Government, because it will then be an interference in the domestic life of the people.

Q. Do you know that this sort of legislation is advocated in all European countries?

A. We are not in Europe and we cannot follow Europe so suddenly and easily.

Q. Therefore do you think that the law should be innocent of all attempts at social legislation? Do you think that if social laws have been attempted by Legislatures people will have very much dissatisfaction? What about the legislation abolishing Sati?

A. My point in this question is not the same as abolishing Sati. This question of marriage is a purely private and domestic affair.

Q. Supposing marriage is penalised, will you be opposed to it?

A. I am opposed to it, because I would leave it to social reform bodies.

Q. Why are you opposed to marriage laws?

A. Because it is an interference with the private affairs of people.

Q. What about Sati?

A. That is quite a different thing.

Q. Do you think that society should allow girls to have consummation before age?

A. Interference in such matters by the Government will be absolutely ineffective.

Q. Will you be in favour of the measure if it is effective?

A. It cannot be effective.

Q. Supposing we make certain suggestions for making it effective?

A. Even then it cannot be made effective. I know it will be so because during the course of my 48 years' practice I came across only one such case though actually numbers of such cases do happen.

Q. What is the reason for these cases not coming to light?

A. Because people will not come forward with cases.

Q. Do you think that in case there is maternity, any further proof is required to get a conviction?

A. You will have to prove the age.

Q. Cannot that be proved by means of birth registers?

A. But the registers are tampered with every day.

Q. Do you mean to suggest that in cases where age is involved, the question is decided unsatisfactorily?

A. That is my experience.

Q. Are you in favour of abolishing section 366 and offences like that?

A. Marriage relations are quite different. Rape of a husband on his wife is different from the offences you are talking of. There is an idea amongst people that these are religious injunctions.

Q. In cases of extra-marital offences are you in favour of raising the age?

A. Yes.

Q. Is your repugnance to penalising intra-marital cases due to the fact that the husband may be misguided?

A. No; it is not that. It will ruin the peace of the family. Think of the fate of the girl if the husband goes to jail.

Q. Do you approve of the principle that for the betterment of the many one or two persons in a society may be punished?

A. It is not a question of punishment at all. My point is that in extra-marital cases you can make the law as stringent as possible. But in marital cases you spoil the peace of the family for nothing if you prosecute the husband.

Q. Supposing he is not prosecuted, will he not kill the girl?

A. It is not a question of killing.

Q. Supposing the girl is 10 and the man is 25, and in the first intercourse he is responsible for an irreparable injury to the girl, would you have any sympathy with the husband in such cases? Do you not think that in the interests of society such persons should be punished?

A. There is no question of society in such cases. By prosecuting the husband in those circumstances you do not do good to the wife.

Q. Do you think that when we are providing punishment we ought to look to the good of the wife?

A. Yes.

Q. Supposing the court is armed with powers to pass a separation order, and entrusts the girl to her parents or guardians, or in the absence of such parents or guardians to men who are interested in society and agree to bring up the girls as daughters, would you give such powers to courts?

A. My experience is that all this is impossible. I say it from my 48 years' experience and I know human nature better.

Mr. S. C. Mitra : You advocate stringent measures as regards extra-marital cases.

A. Yes.

Q. Do you think that in the case of outsiders the age of consent should be 18 or thereabout?

A. I have suggested 16.

Q. As regards extra-marital cases where there is violation by a stranger do you not think that the age should be 18, the age of discretion and majority?

A. There is no harm.

Q. There has been a suggestion by some witnesses that in marital cases the punishment should be fine only. Now the deterrent punishment prevents such cases from coming to court, but if it is fine only the law will be more effective and more cases will come to light. What is your opinion?

A. I do not think it will be effective.

Q. If there be special procedure, if the trial is held in camera and preliminary sanction of the Magistrate is to be obtained before a case is launched do you think cases will then crop up?

A. No.

Q. You prescribe 13 as the age for marriage amongst Hindus in consideration of the fact that there are widow marriages. Will you tell us what percentage of widow marriages take place in British India now?

A. I won't be able to say that.

Q. Do you agree that taking India as a whole amongst Hindus the percentage of widow marriage is infinitesimal?

A. Yes; because the movement was started only within the last 5 years.

Q. When you are talking of religious notion amongst Hindus, have you in mind the sloka "Ashto Varsha . . ." by which the age is prescribed between 8 and 11?

A. No; I am speaking of the conditions in Delhi.

Q. Even here do you observe that these religious texts are followed more in the breach than in the observance?

A. Yes. It is honoured in the breach.

Q. Do you not think that if we pass a law fixing the age of marriage at 14, it will give an excuse for these people to say that the law wants it and therefore they have late marriages?

A. But my point is that these things should be left to social reform bodies and not to legislation.

Mrs. O'Brien Beadon : With reference to Question 11 can you give us any cases where the girl mother had been injured and the child had been injured?

A. We come across such cases almost every day. I won't be able to give you particular cases.

Mr. Bhargava : Were you a member of the Legislative Assembly?

A. Yes; I was a member of the second Legislative Assembly for three years.

Q. Did you ever suggest 13 for the age of consent in marital cases?

A. Dr. Gour wanted that it should be 14, but we were for 13. Dr. Gour's motion was defeated; the Government then brought in a Bill for 13 and it was supported by me.

Written Statement, dated the 15th August 1928, of Mr. SHIV CHARAN DAS, Secretary, Arya Samaj, Chowri Bazar, Delhi.

1. Yes.

2. (a) None.

(b) High death rate of women between 20 and 35 years of age, infantile mortality, defective children, cases of nervous breakdown, and hysteria, premature old age, and loss of youth, the lack of conjugal satisfaction in the choice of spouses.

3. Yes. Cases of rapes have been reduced.

4. (i) No. Since the limitation against cohabitation has been virtual in its effects. There has been none of the effects mentioned.

Steps proposed:—

Registration of marriages, legal bar against marriages under age, permission of the District Magistrate, on production of age certificates.

5. Puberty is attained at 14 years of age. In rich and meat-eating families they generally attain puberty at 12.

6. (i) Yes.

(ii) Mostly.

(iii) In many cases. Cases not on record.

7. No.

8. *Goana* generally coincides with the consummation of marriages. *Goana* is performed both prior and anterior to the attainment of puberty.

9. It can be delayed in consideration of her inclinations towards education and her constitution. Generally two or three years.

10. Not before 16 years of age.

11. Many cases. Injuries sustained rupture of vagina, aterina troubles, leucorrhœa, and early consummation.

12. Yes.

13. Yes. Girls even up to the age of 20 or 25 are found reading in girl's schools and colleges.

14. No. Generally not.

15—20. Lawyers can throw better light on this point.

21. On the strengthening of the penal law as well as on progress of social reforms by means of education and social propaganda.

Oral Evidence of Mr. SHIV CHARAN DAS, Secretary, Arya Samaj, Chowri Bazar, Delhi.

Delhi, 10th October 1928.

(Vernacular.)

To Chairman : I am Secretary of the Arya Samaj, Chauri Bazar. There are 800 members. Everybody should take the previous sanction of the District Magistrate before a marriage can be celebrated. The District Magistrate will verify and then if he considers it fit will give permission on the proof of age of the girl. The medical evidence is not satisfactory and at times medical authorities give certificates without verification. The name of the child should be entered in the birth register. After sometime when the report is made a certificate should be issued by the registering authority for future use. It should be an obligation on the municipality or district board to issue a notice to the parents of the child concerned that his name has not been entered just as they send notice for vaccination. According to Vedic Dharm Namkaran Sanskar is performed after

11 days but if the child is ill it is done after 111 days and if it cannot be done even then on account of certain circumstances it must be done after one year.

Q. Does consummation take place before puberty or within 13 years?

A. Yes.

Q. Is it among many people or is it among a few people?

A. There are few such cases but generally it takes place immediately after puberty.

Q. There are two laws—marriageable age law and the age of consent law. Which of these would you prefer?

A. I want both. If there is a marriageable age it should be 16 for girls and 25 for boys.

Mrs. Beadon : Have you come across any cases of injury to young girls? Can you give particulars of any such cases?

A. I used to live in Nia Bans at Delhi. About 10 years ago there was a married girl in my neighbour who was about 12-14 years. She was married and her both legs were paralysed. Even then her husband used to cohabit with her and she died.

Q. Had she a child?

A. Yes she had a child but it died.

Q. How long after the child-birth the mother died?

A. A few days after.

Q. Any more cases?

A. There was a girl who was married early, she had several children all of whom died. I am a resident of Faridabad, District Gurgaon, and as I am connected with such institutions I can confidently say that it is due to early marriage and early consummation that women suffer. It has very bad effects and they get diseases such as leucorrhœa, consumption.

Q. Were these two cases among Hindus or Mohamedans?

A. Hindus.

Q. Were they poor?

A. They were middle class people and could afford.

Mr. Mitra : In extra-marital cases when do you think a girl is intelligent enough to give an intelligent consent and can understand the consequences?

A. It should be after 16.

Q. In marital cases physical development is sufficient but in extra-marital cases don't you think it should be the age of discretion?

A. Yes, it should be as high as possible after 16.

Q. In answer to Q. No. 4 you have mentioned about registration of marriages. What do you mean?

A. If marriages are registered people will be careful in giving the right age and they will not marry at an early age.

Q. What would you suggest for villages where there are no arrangements for registration?

A. In those places *panchayats* should be organised and they should do this work.

Q. If births are registered and the date given is more accurate why do you suggest the registration of marriages?

A. If that is correct then there is no necessity for the registration of marriages. When a birth is registered a certificate should be issued and that certificate should be produced when marriage takes place.

(Witness promised to send in a written statement quoting authorities on the subject.)

Letter No. 1076, dated the 10th October 1928, from Mr. SHIVA CHARAN DAS, Secretary, Arya Samaj, Chauri Bazar, Delhi.

With reference to my evidence before you yesterday, I beg to send the following quotations from sacred books of the Hindus (Aryas) and other important and authorised sanskrit books in support of my opinions.

पञ्चविंशे ततो वर्षे पुमाचारौ तु षोडशे
समत्वागतवीर्यौ तौ जानोथात कुमलोभिषक्
सुश्रुते. सूचस्थाने अध्याय ३५.

आद्यं

1. A talented and enlightened Vaidya (Doctor) should know that a man at 25 while a woman at 16 reach at a stage of (समत्वागतवीर्यौ) equal energy. (Hence proper time for marriage).

जनषोडशवर्षायामप्राप्तः पञ्चविंशतिम्
यद्याधत्ते पुमान् गर्भं कुक्षिस्थः स विपद्यते ।
सुश्रुते शा० अ० १००.

2. If a girl under sixteen conceive of a man under 25 years, she very often miscarries.

जातो वा न चिरञ्जीवेऽजीवेद्वा दुर्बलेन्द्रियः
तस्मादत्यन्तं बालायाम् गर्भाधानं न कारयेत् ।
सुश्रुत शा० अ० १००.

3. But if she do not miscarry and child is born, he does not live long, but if he does live long he is nothing but a weakling; never should therefore a man have sexual intercourse with a girl of a tender age.

त्रीणि वर्षाण्युदोक्तेत कुमार्यृतुमतीसती
ऊर्ध्वं तु कालादेतस्माद्धिन्देत् सदृशं पतिम् ।
मनु० अ० श्लोक ८०.

4. Let a maid wait for three years after she has begun to menstruate and then let her choose for herself a husband, her equal.

रमादेव स्त्रिया रत्नं रजः संस्रं प्रवर्तते
तत्त्ववर्षाद् द्वादशादूर्ध्वं याति पञ्चाशत्सयम् ।

5. A girl menstruates generally at 12. (Thus she becomes marriageable after three years have passed the time, i.e., at sixteen.)

चतस्रो भवस्था शरीरस्थ, वृद्धिर्यौवनं सम्पूर्णता ।
आषोडशादवृष्टिः । आपञ्चविंशतिं यौवनम् । आसत्त्वारिगतः
सम्पूर्णता ततः किञ्चित्परिहासिचेति (सुश्रुत सूचस्थाने अ० १५)

6. There are four stages of a man's bodily development :—

1. Increasing stage from 16 to 25.
2. Period of youth life from 25 to 40.
3. Full development at the age of 40 or about.
4. Age or period of dissolution.

It is clear that at the age of 25 a man's body is properly developed and the reproductive elements perfected and it is at the age of sixteen that a woman's body is strong enough and her reproductive organs sufficiently developed to bear good, healthy children.

ब्रह्मचार्येति समिधः । समिधः कार्पाणं वसानो दोक्षितो दोषभर्तुः ।

स सद्य एति पूर्वस्मादुत्तरं समुद्रं लोकान्तसंगम्य मुहुराचरिन्नत ।

(अथर्व काण्ड ११ अनु० ३ मं ६)

7. A man should marry after complete Brahmacharya vow when he gets budding of moustache and beard. (At the age of 25 at the least).

सन्नाऽसि प्रतीची दिमादित्यस्ते देवा अधिपतवो वरुणो हितोनां
प्रतिष्ठता सप्तदशस्त्वा स्तोमः पृथिव्यारं त्रयतु ।

मनु० अ० मं० १२ ॥

8. A girl should marry at the age of *seventeen* at the least.

9. Mahrashi Dayanand :—“ The best time for a marriage, for a girl, is from the 16th to the 24th year of her life and for a man, from the 24th to the 48th year. The marriage of a girl of 16 with a man of 25 years is called *inferior* marriage. Of a girl of 18 with a man of 35 is *medium* one. Of a girl of 24 with a man of 48 is called *superior* marriage.

The best form of marriage is that by choice (स्वयंवर) after the education of the contracting parties is finished and their Brahmacharya for the aforesaid periods completed. Happy is the country wherein the people devote themselves to the pursuit of knowledge, live chaste lives and observe the *aforesaid system of marriage*. Down into the depths of misery sinks that country wherein the people marry early for if marriage in early life is in vogue it is the basis of all evils and brings on the absolute ruin of the people who follow it.”

(DOYANAND SARSWATI, Satyarth Prakash,

Ch. IV.)

10. Dr. Belfour in his well-known book ‘Marriage and Parentage’ :—He says “ I concluded after carefully observing and taking into consideration the aftermath of 24 thousand of married couple that those parents who were married before twenty their sons and daughters were mere weaklings and sicklies, while those that married after an age of 25 to 40 they had healthy and robust children ”.

11. Dr. Trall quotes Dr. Johnson at page 209 of his book :—“ At the time of marriage the girl's age should be that of 21 while man should be of 28 ”.

12. Philosopher Davis of America states in his book ‘Harmonia’, Part IV, page 389 :—“ The best time for a girl to marry is the ability for her to bear conception and it is between 16 to 30. After this period such capability grows lesser and lesser ”.

13. Dr. Coven in his book "Science of New-Religion" mentions;—"That there are certain bones in the body of man which never gets developed fully before 25. Neck-bones develops at 18 but the back-bones of the shoulders never gets strong before 25. The same is the case with leg-bones. After a great investigation it has been confirmed that in the climes in temperate zones, girls never attain the age of puberty before 24. If a man does not marry before 22 or 30, it is better for him. But we can say that a man should never think of marriage earlier than 25 and a girl before 21 or 24."
14. Professor Laerno of France mentions in his book that generally in European countries girls marry at the age of 15 up to 35.

Historical Evidences.

15. Maharaja Ashavapati (अश्वपति) declares on oath that none could marry in his reign before proper time, a girl before 15 and a man before 25.

16. Maharaja Ramchandra (रामचन्द्र) was of 25 at the time of marriage and Seeta was at 16 at the time.

(वष सनाइत के जइ रामा। वष महाराज को सोया भामा॥)

This age of 27 and 18 was at the time of banishment that took place 2 years after their union.

Sir, the perusal of the principles (of Sexual Physiology) laid down in scientific books, observation of the laws of nature and reasoning on this subject cannot but lead me and every one to the irresistible conclusion that a man and woman, under 25 and 16 are not fit for discharging reproductive functions. All those who violate or have violated the above principles come and have ever come to grief sooner or later. May I pray for the sound decision and restoration of the old, old custom at your hand.

Written Statement of Mrs. J. C. CHATTERJEE, Kaiser-i-Hind Medallist, Honorary Secretary, Delhi Women's Educational League, Delhi, on behalf of the League.

1. Some dissatisfaction exists among the educated and advanced classes. The law on the subject is very little known.
2. Educated and thinking people emphatically believe, that the Age of Consent should be raised. If a girl is considered a minor and so unfit to give her consent to business contracts, it is surprising that the law should consider her competent to give intelligent consent, to what is the most serious step in the life of a woman.
3. Such crimes are not very frequent in this part of the country, but they undoubtedly do occur. The amendment referred to in this question, has had little visible effect.
4. In the opinion of the League, there has been no effect noticed. On the contrary, the present trend is to hasten consummation after marriage, whereas not long ago, it was the practice to postpone consummation considerably after marriage.
5. The usual age is twelve or thirteen. It does not differ very much in different castes and communities.
6. Cohabitation is common immediately after puberty, but it also occurs before puberty. The age in this matter is of little concern. The only criterion among the majority of people is the attainment of puberty. The League has not heard of any such cases coming to court.

7. The membership of our League is composed of ladies belonging to all castes and religions, including Sanatan Dharmists, Arya Samajists, Christians and Muhammadans. All members emphatically declare, it is not based on any religious injunction, but is the result of mere social customs, which we believe are of comparatively recent growth, in the history of India.

8. In our part of the country and specially in the city of Delhi, the ceremony, is going out of vogue. Whenever it takes place, it does so generally after puberty.

9. We do not consider it sufficient. We believe that three years after the attainment of puberty must elapse, before a girl's physical development can be considered sufficient.

10. We believe that the age should be put at 18 years.

11. Unable to answer.

12. The high infantile mortality in India, is partly the result of early consummation and maternity. The effect of these customs, is much more disastrous on the education of girls and also on their own health. They suffer economically, intellectually and physically.

13. Generally no such effect has been noticed. The general public hardly know of the law in this respect. But among the educated sections there is a demand.

14. Unfortunately ignorant and uneducated women do so.

15—19. We are unable to answer these questions.

20. We believe that legislation, fixing the minimum age of marriage is likely to be more effective. This would undoubtedly be more in consonance with public opinion in our part of the country.

21. Legislation is merely an expression of the collective will of the people. Social legislation particularly, can only be successful, if it is backed up by well educated and well informed public opinion. We therefore attach an immensely greater value to the progress of social reform, by education and propaganda, than to legal provisions.

Oral Evidence of Mrs. J. C. CHATTERJEE, Honorary Secretary, Delhi Women's Educational League, Delhi.

(Delhi, 11th October 1928.)

Chairman : How long has the Educational League been in existence?

A. About one year.

Q. Is it affiliated with any bigger institution?

A. Yes; it is affiliated with the Women's Indian Association at Adyar.

Q. What is the membership of the league here?

A. About 70.

Q. Are the views which are given in the Statement the views of the League?

A. These are the opinions of the General Committee of the League.

Q. You say that the law on the subject is very little known. What would you suggest to make it more effective? Will your Association undertake to make it known?

A. I think so. One of its objects is to do this work.

Q. Is there any other way of making it more known?

A. I can suggest nothing better than social propaganda.

Q. In answer to question 6 you have said that cohabitation is also common before puberty. Are such cases common?

A. My own personal views are different from those contained in this memorandum which has been sent by the League. I do not think that such cases are common.

Q. In cases in which it is immediately after, do you think the age of girl is 13?

A. No; I do not think so.

Q. Would you be able to say why this law has not been effective?

A. Personally I think there was no need for such a law. At least from my experience of Delhi and Punjab I can say that nobody seems to have felt it so far.

Q. Do you mean to say that in Delhi and in the Punjab the law is not necessary?

A. I mean raising the age. My own opinion is that in the Punjab and Delhi the law is not necessary. In the case of Banias the law may be necessary but even among the working classes in the villages and other depressed classes the law is not necessary because in them consummation is very much later.

Q. What is generally the age of consummation?

A. I come into contact with people in the course of my child welfare work and I have come across no cases in which the consummation is below 15.

Q. Is that age also the age of marriage?

A. Marriage age is lowest in villages and rural areas but the girl is not sent to the husband's house before she is 15. But if girls are married in Delhi itself it is bad. They have early consummation then. But if they are married outside Delhi the girls are well-protected by custom.

Q. Do you mean to say that even among the upper classes in the city early consummation takes place?

A. Generally in Delhi it is so.

Q. Do you mean to say that it is impossible to make the law effective?

A. In rural areas it is absolutely unnecessary. In towns it is impossible to enforce the law, because the girl is always kept at home.

Mrs. O'Brien Beadon: You say that the high infantile mortality in India, is partly the result of early consummation and maternity. Can you give us any cases?

A. It is not my view, but the view of my League. Personally I would not put down infant mortality to early consummation and early maternity at all.

Mrs. Brij Lal Nehru: What are the other reasons?

A. I have been doing child welfare work for the past 17 years and I have found that poverty and ignorance are more at the bottom of this infantile mortality. For instance take a woman who has a child at 15, and take another woman who is married later and gets children later. I find that, leaving poverty and other considerations aside, the children of educated women, i.e., who have matriculated or graduated, are weak whereas the children of a girl who has been married early and has a large number of children, but who is uneducated, are stronger.

Q. Do you mean to say that it is because the uneducated mother is living in places which have better hygienic conditions?

A. I am not talking of rural areas only but of cities also. Any time a girl who is uneducated is healthier though she has been married early than an educated girl who has been married later. I would not therefore put down infantile mortality necessarily to early marriage and early consummation.

Q. Do you think that everywhere in India this age of consent law is unnecessary?

A. I have no experience of other provinces except Delhi and the Punjab.

Q. If it is necessary for the other parts of India, would you personally advocate the raising of the age of consent?

A. I would not.

Q. What are your reasons?

A. Personally I feel that this law interferes with the liberty of individuals and with the family life of people. Here is something which will absolutely break up family life in a joint family.

Q. Do you not think that if it can be enforced, the advantages will be more than the disadvantages which you have mentioned?

A. I do not think so.

Q. Do you advocate a law penalising marriages?

A. It is advocated in the memorandum, but my personal views are different, but I did not want to influence the League in any way. Personally I do not believe in legislation either penalising marriages or fixing the age of consent.

Q. Supposing the punishment is reduced and the hand of the police is taken away from the investigation do you think the law will be desirable?

A. In my opinion in all these matters the people should be left to themselves. It is demoralising to have such legislation in the Statute book. These things should come by education, and it is therefore I recommend compulsory primary education.

Q. But that is not the trend of public opinion in other advanced countries.

A. Take other countries, what is the age of marriage there? In England it is only 15. My opinion on the question is very decisive and I think that there should be no legislation on the subject.

Mr. S. C. Mitra : Are you against a minimum age being fixed for marriages?

A. No; I suggested 14 or 15.

Q. You personally do not want a law for consummation. Do you think that no law is necessary in extra-marital cases also?

A. I think we can have legislation in extra-marital cases. I am, however, for fixing the age at 16 and not at 18.

Q. Do you think that Indian girls are educated enough at 16?

A. It is not a question of education. After all you must look at certain other facts also.

Q. As regards the age of consent in intra-marital cases it is only the development that we have got to consider; but in extra-marital cases the girls should have attained the age of discretion. Do you think a girl of 16 if she is not educated enough will have discretion enough?

A. I believe they have discretion. In some respects they are far advanced in matters which concern them than educated girls of a higher age.

Q. Do you mean to say that they are more advanced and intelligent?

A. I would say that considering the environments in which they move, they are developed more than others in certain respects.

Q. What is the ordinary age of puberty in this part of the country?

A. 12 or 13 years.

Q. Do you think that a period of 2 or 3 years should elapse before the girl can be fit for consummation?

A. I am not a medical person and therefore I cannot give an opinion on the subject.

Maulvi Muhammad Yakub : From your experience of child welfare work have you found any difference in the weight and vitality of children that are born to a tender mother and the children that are born to a mother at the age of 17 or 18?

A. I have been conducting these baby shows for the last 7 years, and we have been keeping records of babies. Ten years back I might have

given a different opinion on the subject; but since the show was started I have taken the weights of babies or mothers of 15 or 16 and also the babies of mothers who have been married later. I did not notice any difference in the weight of the children. The weights of the children will be the same till the 6th month. The difference comes when the babies are weaned. If the mother gets no nourishment the weight of the baby goes down. We have been trying to get prize babies of one year for the next year also, and we find that if the mother is poor and hygienic conditions are bad they make a tremendous difference in the child.

Q. Have you come across cases where girls gave birth to children at 13 or 14?

A. In Delhi I have not come across any such cases. In the All-India Child Welfare Exhibition we get about a thousand children every year and I have not come across any mother of less than 14. Even at 14 they have been very rare. I should think only two or three were 13 or 14.

Q. Among ladies generally do you find any tendency for raising the age for marriage?

A. I am interested in the education of ladies and public health and I concede that there is a tendency to increase the age of marriage without any law or anything like that.

Q. Do you think that that tendency is good?

A. Yes.

Q. Is this desire common amongst Hindus and Mussalmans?

A. In the case of Mussalmans there are very few cases of early marriage. Only in the very poor classes amongst them early marriages exist.

Q. There was a Ladies' Conference in Delhi last year, and there were many Indian ladies present on the occasion. Did you have a talk with the Muslim ladies who were then present on this question of fixing the age for marriage? Did anybody tell you that it would be interfering with their religion?

A. No; I had no opportunity of discussing the subject with them.

Q. In paragraph 4 it is stated that in the opinion of the League there has been no effect noticed, on the contrary the present trend is to hasten consummation after marriage, whereas not long ago, it was the practice to postpone consummation considerably after marriage. Is that so?

A. It is the opinion of the League and they are talking of Delhi city. It is true of Delhi.

Q. Is it true outside Delhi city also?

A. It is not true of cases outside the city of Delhi. This relates to city life where city girls are married in the city.

Q. You are for fixing the age for marriage, but you are opposed to the age of consent. The reason is that the law should not interfere in such matters. But supposing the age of marriage is the same as the age of consent, will you then have any objection?

A. I would even then object.

Q. On that hypothesis there would be no occasion for any cases occurring.

A. But I would not like laws like that to be enforced. Why should there be any law like that when the age of marriage is raised?

Q. But there are then no domestic relations involved.

A. You will not know what the ages of the girls would be and it would lead to domestic troubles.

Q. Are you generally in accord with the principle contained in Sarda's Bill wherein punishment is provided for the parents of the boys and the girls if they marry their children below the age fixed?

A. I have not studied Sarda's Bill and therefore I am not in a position to give an opinion.

Q. It has been suggested that it is hoped that if the extra-marital age is raised to 18, it will help in securing society against abduction and seduction and the tie of the family would be made stronger. Even now the age is 16 so far as seduction is concerned and 18 so far as offences of procuring girls for immoral purposes are concerned. Do you not therefore think that the family tie will be further strengthened if the age in extra-marital cases is increased to 18?

A. Yes; I think there will be some good from that.

Mr. A. Ramaswami Mudaliyar : You are against any age of consent being fixed because it will interfere with the domestic affairs of people. You are against 13 also, I take it, for the age of consent in marital cases.

A. I am against any legislation in such matters.

Q. Even 12?

A. Yes.

Q. Then would you advocate the repeal of the law altogether? (There is an opinion that the entire legislation should go leaving people free to have things in their own way.) Will you go so far as to say that?

A. I would say. What exists, let it exist. But let us not make conditions worse.

Q. You say that educated girls deteriorate in physique. If that is so, would you advocate higher education for women in the interests of the race and in the interests of women?

A. I do not mean to say that higher education is bad in itself, but the present system of education which is being imparted to our girls is doing more harm than good. I would not therefore advocate higher education for our girls till some system is devised which is suited to the climate of our country, and the physique, environments, etc., of our girls.

Mr. Mudaliyar : You said you were connected with child welfare work for the last 17 years. May I know the nature of the child welfare work that you have been doing? When was the first child welfare centre started in Delhi?

A. About 10 years back. Before that I have been connected with the Cambridge Mission, Delhi. My husband also was connected with that Mission and our work has been limited to the depressed classes. We had sort of busties, slums round about Delhi where the conditions were very insanitary. We treated the little children and managed to have them seen to. Before the Government came in, the Mission had started the work.

Q. You have worked in towns, or villages also?

A. In villages, I must say, I have not done active work. But my father was a district officer and I have been a good deal in the districts. I have seen a good deal of village life. I know of two women doctors who have been doing a good deal of work. I have heard a great deal from them.

Q. Excuse me a personal question. You think that higher education for women is not good under the present system. Have you tried to carry it out into practice?

A. Well, there has always been a struggle between my husband and myself. He is for higher education and I am not. I would not certainly like the physique of my daughter going down. I would like her to have all the charms that a woman desires. I would go in for music and things like that. But certainly I would not ruin her health by the present education.

Mr. Kanhaiya Lal : You are in favour of marriage legislation. Suppose it is not possible to have marriage legislation.

A. I would not mind, I would only be too glad.

Q. Would you not then have a law fixing the age of consent?

A. I will have no law whatsoever.

Q. You are probably aware that 20 per cent. of the children born in India die within their first year. Is it not a very heavy mortality?

A. It is.

Q. And probably you are also aware that between the ages of 10 and 15 and between 15 and 20 a much larger number of females die than males. Is that not due very largely to early marriage or early consummation and early child-birth?

A. Personally I don't think so.

Q. Is that one of the causes?

A. I don't know what the causes in other parts will be, but certainly in this part of the country I would not put that down to early marriage at all.

Q. If it is partially due to early maternity anywhere would you not recommend that some action should be taken to stop early consummation?

A. The only way you can do it is by having an age of marriage.

Q. But suppose there is no age of marriage fixed by law. Then in order to prevent the injury to the nation and to the children would it not be desirable that the age of consent should be fixed?

A. That is the next best. If you put it that way I would recommend fixing the age of consent.

Q. What age would you recommend?

A. I would recommend the same age, 15 for marital and 16 for extra-marital cases.

Q. We are told by one of the medical women of great experience that if the mother is immature, her child is of necessity below par in vigour, in power to resist disease, and in weight. She says that the average weight at birth of babies born in Calcutta is 5 lbs. 11 ounces, here it is slightly over 6 lbs. and in England it is 7 lbs. Is it not desirable that in view of these facts we should take steps to prevent as far as possible early maternity?

A. My own mind on the subject is very revolutionary. I think the only cause of this is poverty. They are actually starving. Those children who weigh 5 lbs. or 6 lbs. might gain an ounce or two in weight, if early consummation is stopped. The real thing is that women are not getting enough to eat after child birth. I have heard these lady doctors saying over and over again that the weight is less than the normal but this is all that they can do. I would attribute this absolutely to economic causes. Early marriage is also due to economic causes.

Written Statement, dated the 25th August 1928, of Lala DESHBANDHU GUPTA, Secretary, Hindu Provincial Sabha, Delhi.

1. No dissatisfaction has been expressed by the general public as people know very little of the law as to the age of consent. But educated India feels the necessity of strengthening the law in the matter and there is no doubt that wherever public opinion has been educated on this subject, there has been unanimous support forthcoming for raising the age of consent in extra-marital cases. But in respect of marital cases public opinion sharply differs and it cannot be said that Dr. Gour's amendment in this respect for raising the age of consent has the unanimous support of educated India. Most of the people are opposed to the proposed change on the ground that in these matters which deal with the private family life of individuals, progress cannot be secured by such legal enactments.

2. I strongly favour the raising of the age of consent in the case of extra-marital cases. The law as at present is not sufficiently strong to check the evil in view. I believe that a child of fourteen cannot give intelligent

consent with any true knowledge of the consequences of such an act. If a girl is considered a minor up to the age of eighteen in other matters, it is very anomalous that the law should consider her sufficiently responsible to give her consent in what may be called the most vital step in the life of a girl.

But I am not in favour of raising the age of consent in marital cases; firstly I believe the law will remain a dead letter as it has remained hitherto, secondly if enforced strictly it is likely to do more harm than good as it will not only give a handle to the subordinate police officials to prosecute people but others will also not fail to make misuse of it in order to harass or bring into disrepute their adversaries.

3. Crimes of seductions are frequent in most large cities and Delhi is unfortunately no exception to this. So far as I am aware the amendment of the law made in 1925 has not made much improvement in this matter. It is by no means easy to prove the age of a girl, so the worst offenders in this respect generally escape punishment owing to the difficulty of proving the victim to be underage. The raising of the age in extra-marital cases will necessarily prove effective in checking this evil as it will be very much easier to prove that a girl is under sixteen or eighteen years of age than it is to prove that a child has not attained the age of fourteen.

4. The amendment of 1925 so far as I am aware has had no appreciable effect, in either postponing the consummation of marriage or in putting off marriage beyond thirteen years. But all such measures have got their value. They are bound to modify public opinion gradually. As has already been pointed out what is necessary to achieve the desired object is the need of an organised propaganda and publicity to explain the provisions of the law in plain and simple words to the masses of the country. A mere amendment of the existing law would not do.

5. The usual age is anywhere between eleven and thirteen. So far as I know it does not vary with different castes and communities.

6. I believe cohabitation as a general rule takes place after the attainment of puberty stage; but in the lower classes instances may not be uncommon where it even precedes puberty.

7. There is a section of orthodox Hindus which holds the view that according to Shastras marriage should take place before puberty but I do not believe there is any religious sanction behind it. The practice is due to a social custom the origin of which can be traced to the Mughal period of Indian History.

8. The Gaona ceremony was fairly common in this part of the country but the present tendency is against it, partly because of the introduction of late marriages and partly because of adverse economic circumstances. Nowadays it generally takes place just after the marriage.

9. No, in my part of the country three years should be the minimum period after puberty to justify such consummation.

10. The age would differ with different girls according to their standards of education and general intelligence, etc., but sixteen can be considered as a minimum.

11. Unable to answer.

12. This question hardly needs an answer. There is no doubt whatever that early consummation and early maternity are very largely responsible for infant mortality. I believe any volume of medical opinion should be forthcoming in support of this view.

13. In recent times public attention has been a good deal drawn to reform in this direction with most useful results; it must, however, be confessed that the development is very largely confined to the educated and advanced classes.

14. This is unfortunately true of the majority of mothers, in this part of the country.

15—16. I have already partly answered these questions. If the age of consent is raised it would be much easier to detect a minor for the purposes of the law in this respect.

17. I strongly favour the separation of marital and extra-marital offences for the purposes of law. I am not in favour of heavy sentences, unless physical injury has resulted in the case of marital offences, but in the former case I am of opinion that stringent punishment should be inflicted.

188. I would certainly make a difference in the procedure of trials in the case of a marital offence, I would advise holding trials in camera and the execution of cases with the least possible delay.

19. I am unable to answer this question.

20. I strongly believe that legislation fixing the minimum age of marriage is much more likely to be effective than the fixing of a higher age of consent in marital cases. I believe legislation in that direction is more logical than in the other and that in this part of the country public opinion is strongly in favour of a legislation for fixing of a minimum age for marriage. This measure can prove very effective if the village school teachers and patwaris are made to report cases of the breach of this law to the competent authorities.

21. I believe both are necessary to achieve the desired object. While education and social propaganda have got much more value, strengthening the legislation has also got its importance and it will necessarily strengthen the hands of the social reformers. My practical suggestion in the matter is that Government should undertake to publish a large number of leaflets in the provincial vernaculars in simple language, explaining the provisions of the law in this direction. These leaflets should be circulated amongst the masses through school teachers and patwaris in every town and village of the country.

Oral Evidence of Lala DESHBANDHU GUPTA, Secretary, Hindu Provincial Sabha, Delhi.

Delhi, 11th October 1928.

Chairman : You are the Secretary of the Provincial Hindu Sabha.

A. Yes.

Q. How long have you been one?

A. For the last 3 years.

Q. What is the membership of the Hindu Sabha?

A. Here it has been from 600 to 1,000. A body is elected out of it which contains about 40 members.

Q. Provincial Hindu Sabha means a representative body of the Delhi Province?

A. Yes.

Q. May I take it that this opinion given by you is the opinion of the Sabha?

A. That is my personal view and not of the Sabha.

Q. Have you had no occasion to take the opinion of the Sabha?

A. The Hindu Maha Sabha has passed certain resolutions and the Sabha could not go beyond that. I think they have fixed the age of marriage at 13. The question of age of consent has not been considered. Hindu Sabhas have been very touchy in these matters. I think the Hindu Mahasabha's opinion might be in conflict with certain provincial sabhas. In the question of marriage the Mahasabha has been very halting. They lag behind Hindu public opinion.

Q. Do you know the limits accepted by the Hindu Mahasabha?

A. I think it is 13 for girls and 16 for boys.

Q. In answer to question No. 2 you say that the law will remain a dead letter as it has remained hitherto. Would you put that as largely due to want of publicity of which you have complained? Supposing it was more known do you think it will be more effective?

A. I think so.

Q. In answer to question No. 4 you speak of organised propaganda and publicity to explain the provisions of the law in plain and simple words to the masses of the country. Do you want that by private societies or by Government?

A. I think private societies aided by the Government can do it very well. Social reform leagues both within and outside municipal boards and district boards can do it.

Q. In answer to question No. 20 you have said that in this part of the country public opinion is strongly in favour of a legislation for fixing a minimum age of marriage. Do you mean the advanced Hindus or the general body?

A. I think a large majority in this part of the country is for marriages at an advanced age. Early marriages are getting extinct. I would only make an exception in the case of microscopic minority of the orthodox people who are opposed to the raising of the age.

Q. Why do you call it a minority?

A. It is a minority in this part of the country.

Q. What would you put it at?

A. Say 25 per cent.

Q. Barring those you think public opinion would have a law penalising marriages.

A. Certainly.

Dr. Beadon : In answer to question No. 14 you say this is unfortunately true of the majority of mothers. You mean that majority of mothers like early marriage.

A. I would rather modify it and say majority of the uneducated elderly women favour early consummation. They want to have a grandson before they die.

Q. And men take objection to early consummation.

A. Yes.

Q. In answer to question No. 12 you say this question hardly needs an answer. Do you know of any cases where early consummation has resulted in hardship to the mother or the child?

A. I have not taken care to make a note, but cases do come to my notice and as municipal commissioner I know that infant mortality and more mortality of girls between the ages 10 and 15 and 10 and 20 is more or less an established fact.

Q. That might be due to tuberculosis and not to early marriage.

A. Might be so, but my general belief is this.

Q. You cannot give any particular instance within your personal knowledge.

A. I have not cared to make a note of them.

Mrs. Nehru : You said that the main cause of this law being ineffective is the ignorance of people with regard to it. Are there any contributory causes also?

A. The other causes are that the people would hesitate to take action under this law even if the breach comes to the notice of some people.

Q. But why will they hesitate?

A. Because it affects the well-being of the victimised girl. There is no divorce in Hindu society. The parents will always hesitate to bring cases.

to the notice of the court. So, I think the law will remain ineffective and has remained ineffective. But the chief cause is the ignorance of law.

Q. And do you think that the other cause is the harsh punishment which is likely to be given to the offender if the offence is brought to light?

A. But so far as marital cases are concerned even if the punishment is lessened they would not, unless the conditions change, come to light. Under the present circumstances the parents would very much hesitate to come to the courts. At least I can say definitely about the Hindu parents.

Q. You say unless conditions change, what conditions do you mean?

A. There may be a social revolution and divorce may become common.

Q. You mean to say that the boy should not be made to suffer because after all he has to live with the girl. As he cannot be divorced from the girl his suffering should not be great.

A. This is what the parents think.

Q. If the punishment is reduced to fine only?

A. That will bring disrepute, and respectable families will very much hesitate.

Q. As far as reputation goes the very fact of committing the act is enough to bring the man to disrepute. If there is any disrepute, the people of the community already know about it.

A. The parents would like to hide it even if the punishment is made lighter. They would like to hide it because they stand a chance of getting into disrepute.

Q. If the power of complaint is given to social reform societies do you think they will be able to bring such crimes to light?

A. They may be able to bring such cases to light no doubt, but I would not advocate giving this power to the social reform organizations.

Q. What are your objections to giving this power to recognised societies or to any society especially constituted for the purpose of making complaints?

A. My experience of the last 10 years in public work tells me that recognised societies or unrecognised societies will not prove effective and will not really do the good that is expected of them.

Q. What is your exact fear?

A. They are not effective.

Q. Your fear is that you cannot get two or three men in a big centre like Delhi or any other place who could be entrusted with public work of that importance.

A. I do not say we cannot find such persons. India is not void of such persons. Suppose a crime takes place in a respectable family, these people will not have the moral courage to go and report. They may be relations of some of them. Pressure will be brought upon them, and they would very rarely proceed along with it.

Q. Even if pressure is brought upon them, it will serve as a propaganda work.

A. That is right, but I don't think this is the right way of doing propaganda work. If constructive propaganda work is done that would be better.

Q. What do you mean by constructive propaganda?

A. You must make it known to the masses that this is a crime, that it affects their own welfare, that it affects their own progeny.

Q. You do not want to bring more pressure than what is brought by means of propaganda on the public.

A. So far as the question of penalising is concerned, in the case of marital cases, I would really make very many safeguards I am not opposed to taking action, but the safeguards should be many. I think in most cases the complaints may not be true. A neighbour who has got certain jealousies

against any person may make false report. Making of false reports will have to be safeguarded against. If we have proper safeguards against that and the false reporters are punished and if a very competent man is entrusted with this work, others are left to report only and report confidentially to a competent authority only then it may be useful. In villages for instance, if a Lambardar is entrusted with this work and he cannot use his discretion in making a report, that would do more harm than good. If a competent authority, for instance, the district magistrate or the president of the local board, and such other persons only are authorised to take action and others are only to report matters to them then it may do some good.

Q. So that with certain safeguards the law may be made effective and useful.

A. Yes, and those safeguards are the restrictions on false reports and that no case should be brought in the case of marital offences unless a competent authority is personally satisfied after making personal enquiries.

Q. Do you want the previous sanction of the magistrate before the complaint is made?

A. Yes, and the complaint should not be formal.

Q. You also said that the investigation of the case should be restricted to high officials of the police. What do you mean by high officials?

A. It should not be entrusted to the subordinate officials.

Q. Whom would you call subordinate officials?

A. For instance the sub-inspectors. But I would further say that it should not be given to the police at all.

Q. Then who should investigate?

A. That may be done by two or three non-official persons who may be appointed for the purpose. Even these high officials of the police are liable to corruption more than those two or three elected persons who have got public confidence and have volunteered their services.

Q. Do you mean the power of complaint and prosecution of the case should be given to certain recognised associations who have pursued the case and the police should be eliminated altogether from this?

A. Yes.

Q. You say crimes of seductions are very frequent in Delhi. Can you say in which class of people they take place?

A. Generally women are brought down here and there is a regular traffic. As regards seduction, these crimes are very common among the poor classes and depressed classes. It is also common among the widows of the higher castes.

Q. Are they taken away with the object of sale or the persons who seduce them, seduce them for their own use?

A. Both purposes. Mostly they are sent to Punjab.

Q. What generally is the age of the girl?

A. It varies from 13 to 20. When they are seduced for their own purpose the age is generally 25, and for sale purposes girls are generally between 13 and 20.

Q. You say there are certain orthodox Hindus who hold the view that according to Shastras marriage should take place before puberty. I want to know whether there is any religious belief with regard to early consummation also.

A. There is a section which believes that consummation of marriage should also take place before a certain age, but that is not so general. There are more people who believe that marriage should take place before a certain age and consummation of marriage is a thing to which no great objection is taken by the orthodox people if it is postponed even.

Q. In answer to question No. 18 you say there must be least possible delay in the execution of the case. By this do you mean that the trial should be summary trial?

A. My point is that chances of publicity before the findings of the court should be minimised as much as possible in marital cases. It affects the whole family. When a case is instituted the competent authority should make sure that the report is 90 per cent. correct. The trial should be held in camera. Of course the judgment can be published. As long as the court does not give its findings the proceedings should not be public. I do not advocate summary trials. What I mean is that the case should not take two months or three months. That means greater publicity in the *brotherly* and the shame that the family suffers. In these cases there should be as little delay as possible.

Mr. Mitra: You say there has been unanimous support forthcoming for raising the Age of Consent in extra-marital cases. You are also strongly in favour of raising the Age of Consent in extra-marital cases?

A. Yes.

Q. What should be the minimum age in extra-marital cases that you would fix?

A. It should not be less than 16 in any case, but I would prefer 18

Q. You also feel that there will be no agitation if the age is fixed at 18 in extra-marital cases.

A. I don't think.

Q. There is nothing in the Shastras about this?

A. No.

Q. Do you think that the age of marriage should coincide with the Age of Consent or the consummation of marriage?

A. I would prefer that.

Q. What would you fix the age of marriage at?

A. 16.

Q. In the event of age of marriage being not fixed at that you would object to the raising of the Age of Consent to 16?

A. No.

Q. You say the amendment of 1925 has had no appreciable effect. Don't you feel that it had a moral effect, an indirect effect in checking these cases?

A. All such measures have got their value. They are bound to modify public opinion and this it has done.

Q. Do you suggest camera trial in these cases?

A. Yes, in marital cases I suggest that.

Q. Don't you think camera trials will go against propaganda work?

A. I think propaganda on constructive lines is better. There should be no publicity unless the court has given its findings. I am in favour of judgments being published. As long as the matter is *sub-judice* there should be no publicity. It will be unfair to the family and the man who is being prosecuted. If a witness has given some evidence which goes against the accused, it is quite possible that later on it may be contradicted. Nobody reads the full details. That will be unfair to the family if these reports are published. But I am in favour of the judgment being published. If a man has committed an offence I do not want to shield him, I do not want to shelter him, and I do not want to protect him.

Moulvi Muhammad Yakub: Don't you think that the charge on a woman having illicit intercourse with a man other than her own husband is more serious and is more scandalous than the charge of her being ravished by her own husband?

A. Yes, it is.

Q. Why do you want then that the more scandalous cases should be tried in the open court and the less scandalous cases should be tried in camera?

A. In extra-marital cases it does not affect the life of the ravished girl so much as in marital cases.

Q. Do you mean to say it does not affect a girl to have illicit intercourse with a man other than her husband?

A. The girls so ravished are generally of bad repute already. They are likely to live a life to which family reputation does not matter much. Such girls do not care for the reputation of the family. While in the case of married couple that is not the case. Such girls who have illicit intercourse generally belong to low and backward classes.

Q. But supposing such a case unfortunately happens in a high caste, in a middle class family. Would it not be more scandalous and ruinous to the status of the girl?

A. Of course it would be. But all the same as the tie is not to continue with that particular man.

Q. Therefore the scandal is greater and the crime more heinous and that is why a heavier punishment is provided.

A. It does not affect the whole family as in the case of a marital offence.

Q. Do you mean to say the reputation of the family will not suffer so much if an unmarried girl has illicit intercourse?

A. It will suffer more than if a girl were ravished by her own husband. What I mean is that cases of girls of high families being ravished by other people are not very many. The girls in such cases whenever they occur are of bad repute already. In the case of marital cases, I think, it will affect the reputation of the whole family very much.

Q. May I know your age now?

A. 29 years.

Q. When were you married?

A. I was married at the age of 19.

Q. What was the age of your wife then?

A. It was 17.

Q. I believe there was no Goana ceremony in your case.

A. But for practical purposes it was.

Q. You say trade in women is very common in this part of the country because they are usually taken to Punjab. Well, is it because there is paucity of women in certain communities in Punjab?

A. This is one of the reasons. These traders in women take poor girls, they sometimes purchase them also, and get them married in higher classes in the Punjab.

Q. How do you think that the raising of the age would affect cases of such abductions?

A. A man who goes in for a girl who is not of age would rather hesitate to do so, to purchase girls below 16 or 18.

Q. The chances of abduction if the age is raised will be more.

A. I think it will have some effect.

Q. Do you mean girls who are over 18 are never seduced or very seldom seduced?

A. At least we will be saving some girls who are seduced between 13 and 18. Up to that age they will be safe.

Mr. Bhargava: You are of the opinion that so far as punishment is concerned, it should be less in the case of marital offences than in the case of extra-marital offences. If you kindly assume for a moment that

in the case of a girl below 12 harm caused by a grown up husband is very great, in fact no less than in the case of grievous hurts, would you not say that the sentence should be the same as in the case of extra-marital offence?

A. Yes.

Q. So that in the case of very young girls, say, under 14 if a husband has sexual intercourse and causes any injury even if not apparent you will be for giving deterrent sentences.

A. Yes.

Q. Above 14 you think there is a cause for differentiation in punishment.

A. Yes.

Q. Supposing 15 is the age at which medical opinion is almost unanimous that below that age maternity always produces some harm to the girl or progeny, would you like that it should be an absolute age?

A. If medical opinion is so sharp and definite that before the age of 16 invariably or in very high percentage of cases harm is done to the girl I would certainly extend the severe punishment upto 16.

Q. Would you not care for the orthodox opinion? Would you not compromise?

A. I think it is not a question of compromise. It affects the whole nation. It affects the future of the nation. It is of very great importance, and orthodox opinion should not be cared for.

Q. In the case of girls under 14 do you not think that the cases should be enquired into by the ordinary agency, that is, the police, because in these cases it is very important to secure the evidence all at once otherwise the whole evidence with the lapse of time may disappear?

A. Yes.

Q. If the girl is below 14 would you not make any difference so far as the procedure is concerned? Would you make it cognizable or non-cognizable?

A. Upto 14 I will make it cognizable.

Q. I understood you to say that the reports of these cases should not be published. Do you mean to suggest that the litigants should not be allowed the copies of the statement?

A. Not to that extent. The press should be banned. In other countries, for instance, divorce reports are not produced in papers as that affects the morals of the country. I merely say that there should be no publicity in papers unless the case has been decided by the court.

Q. Do you want some provision to be made in law to that effect?

A. Yes.

Q. Do you know if many, cases are reported now?

A. Yes.

Q. What will be the adverse effects of such reporting?

A. If the case is not proved it will affect the family concerned adversely. The man prosecuted will stand to loose if the case is not proved. It is unfair to the man prosecuted to publish such reports against him.

Q. If the case is not proved the very fact that the judgment will be published is sufficient to establish the character of the accused. Is it not?

A. But very few people read the judgment. It is not necessary that the man who reads the proceedings should read the judgment also. A man sometimes reads a very sensational evidence against a man who has been prosecuted and the evidence may be quite false, which is not fair to the accused. I want that such evidence should not be published unless the court has given its finding.

Q. This is likely to happen in both cases. Why do you differentiate between marital and extra-marital with regard to this?

A. I do not.

Q. You are of the same opinion in regard to cases under Section 498, Indian Penal Code. There also the reputation of the girl who is eloped as well as the seducer is the same.

A. Yes.

Q. Would you like the same thing to obtain in abduction cases?

A. I think there is much difference between cases under Section 303, Indian Penal Code, and Sections 375 and 376, Indian Penal Code. Those cases stand to my mind on a different footing.

Q. You just said that you would like that the district magistrate be armed with powers to sanction prosecution and to make action himself if he so chooses. Do you mean to say that the power which is now being enjoyed by the members of the public, in the launching of prosecution, should be restricted?

A. I think the powers up to 14 should remain as they are and after that the power should be given to the district magistrate and the guardians of the girl or the husband and the girl herself.

Mr. Mudaliyar: You said in marital cases the case should be tried in camera. You mean that the public should be excluded and only those who are interested in the girl or the accused should be present in court.

A. Yes.

Q. Is this to prevent unnecessary publicity being given to the family and damage to its prestige?

A. Yes.

Q. Do you think cases will then easily come to light?

A. Yes.

Q. There won't be so much reluctance on the part of the neighbours and others to report and the punishment being the real deterrent you think that all the objects of the law will be served if the case is conducted in camera and no publicity is given.

A. Yes.

Q. You don't want that day to day reports of such cases should be made in papers and that the judgment be reported even though the name of the accused be left blank.

A. Yes. The name being left blank is another alternative.

Q. These are cases in which so much publicity is not necessary as the punishment for the man committing the offence.

A. Yes.

Q. Is that the reason why you suggest that the cases may be tried in camera?

A. Publicity is necessary if the offence has been proved. It will have some effect in preventing crime. Publicity should not be given unless the cases have been proved.

Mr. Kanhaiya Lal: Would you make the offence compoundable in order to bring good feelings between the husband and the wife?

A. Certainly not before the age of 14.

Q. Above 14 it may be compoundable.

A. Yes.

Q. Do you not consider it desirable that in the interests of the girl that the good feelings between the husband and the wife may be restored? If a husband is sent to jail the chances are that he would not like to see the face of the wife and he would rather go and marry another woman.

A. I would consider the husband a brute if he cohabits before 14.

Q. Would you give any opportunity for repentance by bringing the case under the warning section, 562 or by requiring him to give a bond for future good behaviour and not giving imprisonment so that he may be able to live together with his wife?

A. I think a sentence is necessary if the girl is below 14.

Q. Do you realise that if the husband is sent to jail at the instance of the wife he would get so much annoyed with her that he would not like to see her face and may discard her and may take another wife?

A. But the society will find out some other means for saving the girl.

Q. What means would the society find out? She is not allowed to divorce.

A. That is one difficulty undoubtedly. But we are at present at a stage when we want to make the gravity of the situation known to the masses and we will stand the risk. If the infliction of deterrent sentences will do more good to the society than the harm if some girls are really victimised, they have to suffer.

Q. But you recommend that the proceedings should be in camera and don't want publicity.

A. My object is that I do not want that any husband or any family might be prejudiced against whom the case has not been proved. When the man is convicted, I do not sympathise with him, I do not shelter him and publicity may be given.

Q. Would you be in favour of having a system of matrimonial court consisting either of non-officials or the magistrate and two non-officials to try these marital cases?

A. I think that will be exaggerating the thing too much or making it known to the world that the cases are too many while they are really very few.

Q. We have got matrimonial courts both in the case of Christians and Parsis. In the case of the latter the court is more or less a panchayat. This is instituted in order that the trial may be expedited. In the ordinary court the case will take its own turn, whereas in the case of matrimonial courts they will have no work except such cases.

A. I don't see any harm in it except that it may be unnecessary burden on the finances of the Government.

Q. What is the burden? There would be paid selected non-officials?

A. Well, I don't take objection to that, still I think it is not necessary.

Q. You see in marital cases boys and girls are frequently brought together by some fortuitous circumstances and the marriage is consummated and the boy is only of 16 and the girl is 12 or 13 only. Would you in such cases punish the parents rather than the boy of 16?

A. I think that the courts would be wise enough to exercise discretion in such cases. They will try him leniently and may perhaps give him a warning only. I think the right remedy is raising the age of marriage.

Q. But that is not within our power. It is possible that the whole proposal about marriage legislation may fall. And therefore at present we are confining attention to the Age of Consent legislation.

A. That is the second best.

Q. Would you not advocate that in cases of this character guardians and parents of the girl who allow the girl to go to the house of the husband be punished?

A. This may have some deterrent effect. But in many cases the parents may not really be guilty.

Q. In cases where it is found that it was within their knowledge would you be prepared to punish them?

A. The punishment should only be fine.

Q. If the fine is not paid.

A. The alternative would of course be imprisonment.

Q. Would the fine be a sufficient deterrent?

A. The most unfortunate thing is that in most cases the parents are ignorant of the consequences. This is our misfortune. Owing to lack of education the parents really do not know what harm they are doing. The law must be given greater publicity. It should be made known by the beat of the drum. If the parents are capable of understanding the consequences of the action, they should of course be given severe punishment otherwise they should be leniently treated.

Q. In other words you leave it to the discretion of the magistrate to give such punishment as the circumstances may justify.

A. Yes.

Q. Are you in favour of marriage legislation?

A. Strongly.

Q. And also in favour of legislation, as the second best, fixing the Age of Consent.

A. Yes.

Q. Would you recommend a system of registration of marriages, so that as in the case of births and death reports, reports of all marriages be made to a prescribed authority giving the names of the party their parentage and their ages to serve in case of need?

A. I think that won't be worth the trouble because if they want to escape the punishment they will make false reports. Real reports are the birth reports. I don't think these reports will serve much useful purpose.

Q. Suppose for some reason or another it is not possible to have marriage legislation. Would there be any motive then for making a false record?

A. In that event it may have some effect. All the same I think the worry and expenditure of maintaining such a department is unnecessary.

Written Statement, dated the 19th August 1928, of Swami RAMA-NAND SANYASI, Dalitodhar Sabha, Delhi.

1. There is considerable dissatisfaction against the Age of Consent as contained in sections 375 and 376 of Indian Penal Code. The dissatisfaction is more pronounced among the educated section especially in touch with the social reform movement than among illiterates, who are generally unaware regarding the provisions of law. Women section of the educated community express special resentment regarding the low age now existing in law.

2. I am myself in favour of amending the provisions of law. First because the present age of 14 in case of non-marital state and 13 in case of marital is not an age of discretion. The girl at this age cannot intelligently understand the meaning and responsibility of sexual intercourse. I would raise the Age of Consent to at least sixteen, when the sex sense has developed and she is better fit to understand the import of intercourse.

3. It is my definite opinion formed, as the result of the study of rescue work conducted by organisations with whom I am connected in different parts of the country, that the number of rapes, abduction, and seduction for immoral purposes has appreciably been decreased, since the amendment of law in 1925, but I am of the opinion that the terms of law should be made more rigorous to be of deterrent nature. The present terms of the law are against rape only. In order to fully achieve the object, it is necessary that law regarding abduction of minors should be made more rigorous. The traffic of seduction for immoral purposes has shifted from young girls to minors, because in abduction of minors one is not easily detected, and girls of age are liable to be easily recognised, and difficult to submit to the dictates of abductors.

4. The 1925 amendment in law has not materially done anything to protect married girls from the cruelties of a inconsiderate husband, because administrators of law cannot penetrate households, and inmates due to the conditions especially prevailing among Hindus will not come forward to make a complaint before a competent court of law. There are numerous cases, but rarely any finds expression through legal channels. In Hindu family if a complaint is preferred against an erring husband, it means that the minor married girl still in her teens loses her husband who will never allow such a wife to re-enter his household, and she cannot remarry, because marriage tie is indissoluble, and court cannot grant a decree of divorce. Consequently I am both in favour of raising the age of marriage to the minimum age of 16 and provision of divorce law for the Hindus. Merely raising either the Age of Consent or of marriage will not meet the requirement of necessity. Once the girl is married, and then even the age of the consummation of marriage is fixed, it is very difficult, nay, impossible to effect the reformation and to protect minor wife against the cruelty of husband. Husbands often visit the parental houses of their wives even before the consummation of marriage and on such occasion sexual intercourse takes place. Stimulation of public opinion can do a lot to improve the public opinion, but there should be sanction of law to enforce respect for proper conduct. Government should afford more facilities to social reform organisations to do propaganda in various places and public institutions.

5. In and around Delhi the usual age of girl at which she attains puberty is between 12 and 13 years of age. In higher circles of society owing to conditions of living and diet, puberty may come an year earlier, owing to development of body and stimulation of organs due to other factors of life. Among labouring classes especially in communities where field labour or other hard household works necessary it may be delayed from two or three years in some cases.

6. Cohabitation is common among classes before or after puberty or before age of 13 where child marriage is very common, and after marriage remain in the houses of their husbands. Among these castes a sort of superstition exists that boys must cohabit with girls before puberty. It generally prevails among Chamars, Kahars, Kohlies and Kumhars. Among these classes cohabitation takes place immediately after marriage which is nearly always before 13 years of age. Even among Banias and Brahmins in rural areas where marriage usually is celebrated between 11 and 13 years of age, immediately after marriage cohabitation is the rule rather than exception. Owing to absence of divorce law or any other provisions for the protection of young wife and the prevailing ignorance prevents cases coming to law courts. It is very rare that cases of such nature come to court unless some relatives or the parents of girl have some special motive in getting the husband of their own girl punished.

7. The early consummation of marriage before or at puberty wherever it exists is not due mainly to any religious injunctions. Through ignorance and superstition of ages it has become custom. Among all Smrities and law givers "Shegar Boodh" is the only one which prescribes early marriages before ten years of age but it also does not prescribe any penalty for transgressing the injunction.

8. Gaona ceremony is usually performed and in districts around belonging to United Provinces, and Punjab. It is generally the practice that consummation of marriage takes place after this ceremony, but in some cases which may come to between 2 and 5 per cent. it takes place before that Gaona in 99 cases out of 100 is preferred after puberty.

9. I do not consider the attainment of puberty as sufficient indication of physical maturity for the consummation of marriage. I consider age of sixteen, at least four year after attainment of puberty when the girl has sufficiently developed to be fit for consummation. Before this age the girl has no clear sex sense and consequently cannot deal with man in manner

to avoid injuries to her person or progeny. Women may develop sex stimulation at an early age but the full "Sex sense" or age of discrimination comes much later.

10. In India with the variation of climate of different provinces and conditions of life of various sections the age of the girl must vary under these circumstances when she is intelligent enough to give her consent to cohabitation and duly realise the responsibilities of motherhood, even at the age of sixteen, because in the first instance she does not receive any instructions on its responsibilities, as it can come with maturity of age, she is unable to understand what motherhood really means.

11. In course of my public life I have come across many instances where cohabitation before or after puberty but before full physical development of a girl resulted in permanent injury to her health and prejudicially affected her progeny.

A girl of 14 was married to a man of thirty, bore many children and then died of consumption leaving a weak progeny out of which half have died, and the rest are eking out miserable existence.

12. Early consummation of marriage and maternity is one of the main causes for the high maternal and infantile mortality, and it consequently has vitally affected the intellectual and physical well-being of the people. As an unripe fruit must bring sore throat and bad cold to its eater so a progeny brought into existence by immatures must affect the nation. In Bengal, Bihar, United Provinces, and other parts of the country where infant marriage is generally prevalent, there are teeming millions of diminutive type, stupidity on their faces, with little of common sense, or knowledge and men and women who have become old at age when they should be at the prime of their life. Physical as well as mental weakness has greatly reduced the efficiency and working capacity of the nation as a whole. It has greatly reduced the number of fit men for active life and has lessened the sustaining power against diseases as well as working of natural powers. A nation born of diminutives is neither capable of standing in roads of foreigners nor can compete successfully with genius and inventive powers of a full development nation born of robust and mature men and women.

13. Of late so far the educated and articulate section of the public is concerned, it is being realised that provisions of sections 375 and 376 as amended in 1925 are not in consonant with the modern ideas and the Age of Consent must be raised immediately.

14. Women belonging to all sections of nation have come to realise the baneful influence of early consummation, and in the last 25 years the age of marriage as well as consummation has greatly gone up, and there is rapidly growing movement to marry the girls at more and more advanced age.

15. So far I have knowledge of the things, no great difficulties have ever been experienced regarding determining the age of girls in connection with offences under sections 375 and 376 of Indian Penal Code.

16. Can't express an opinion with authority.

17. I am not in favour of discriminating between extra-marital and marital offences. I will place them into same category. I think the punishment at present prescribed for the offence is sufficient.

18. I am not competent to express an opinion regarding procedure of law.

19. The present safeguards in my opinion are enough.

20. Public opinion is in both favour of raising the Age of Consent and the minimum age of marriage. But if I have to choose between the two, I am for raising the age of marriage.

21. Propaganda for social reform has its own value but there must be some penal clause on the statute of the country also.

**Oral Evidence, dated the 11th October 1928, of Swami RAMA NAND,
Dalitudhar Sabha, Delhi.**

Chairman: Is Dalitudhar Sabha in connection with untouchables?

A. It is primarily meant for that.

Q. How long has it been in existence?

A. Since 1921.

Q. What is the membership of this Sabha?

A. This is a standing committee of the All-Indian Aryan League and its constitution is of 16 members.

Q. This is the opinion of those 16 members?

A. No, this is my individual opinion.

Q. This view was never placed before the committee?

A. No.

Q. In your answer to question 3 you say that in order to achieve the object the law should be made more rigorous?

A. Yes. I want the punishment to be increased.

Q. How much more do you want?

A. I want a deterrent punishment.

Mrs. Beadon: In reply to question No. 11 you have mentioned one case. Can you give us any other cases?

A. A girl of 9 or 10 years got married to a boy of about 14 or 15 years and I know for certain that they had sexual intercourse. The girl is in Delhi and belongs to Kahar community and I know that her physique has been ruined for life. That happened within the last 2 years.

Q. How is it that a case like that was not brought to court?

A. Nobody cared to bring it to court. It was known in the family, it was known by the persons where the boy is employed.

Q. Is there any organisation that would be interested? You are interested in the untouchables.

A. Kahar community is not regarded as untouchables.

Q. Is there any public body who takes any interests in such cases?

A. Not to my knowledge.

Q. Can you suggest anything by which these cases may be brought to court?

A. If vigilance committees are formed by public men something can be done in this direction but very little.

Q. Why do you suggest that vigilance committee would not take any interest? How can we make it effective?

A. They cannot penetrate families and they cannot know the actual conditions.

Q. You say one case within the last 2 years. Do many cases occur or is it only one case?

A. In one other case the girl was a Chamar girl. She is about 11-12 years of age and her husband is of about 18-19 years. Her body has been ruined by her husband.

Q. Do the parents marry them at this age? Is it the custom?

A. This is custom.

Q. In either of these cases was a child born after marriage?

A. No.

Mr. Mitra: Are you in favour of social institutions also to make complaints in cases where infringement of the law is done?

A. Yes.

Q. You say that there is a superstition that boys must cohabit with girls before puberty. Is this superstition about cohabitation or early marriage itself?

A. Early marriage and cohabitation among certain communities in United Provinces.

Q. What are those communities where cohabitation is considered necessary?

A. I will point out certain classes among *Khatiks*. There are different sects among them and the backward sections are still addicted to it.

Q. You are also in favour of divorce laws?

A. Yes.

Q. What is the general age for marriage in this part of the country?

A. About 11 and 12 in rural areas and menstruation generally begins at 13.

Q. What do you think how much period should elapse before a girl is fully developed after the signs of first menstruation?

A. Four years.

Q. You are in favour of a law fixing the minimum age for marriage?

A. Yes, the minimum should be 16.

Q. As regards the Age of Consent in marital cases what age would you suggest?

A. I do not make any difference between marital and extra-marital cases.

Q. It has been suggested by some witnesses that for marital cases physical development of the body is the only consideration but in extra-marital cases intellectual development and moral education and its consequences are also to be taken into consideration. In view of these suggestions and when we know the age for discretion or maturity in law is 18 years do you not think there should be some difference in extra-marital cases?

A. Yes.

Q. Then may I take 18 as minimum in extra-marital cases?

A. Yes.

Mr. Bhargava: You say there will be some orthodox opposition if the marriageable age is fixed by legislation at 16, but you think no heed should be paid to that dissatisfaction because national interests require that the minimum age should be 16?

A. Yes.

Q. You have spoken of vigilance societies and the right of complaint being given to them. Are there any societies in existence?

A. Not to my knowledge.

Q. Are any sort of societies in existence in rural areas?

A. Not to my knowledge.

Q. In rural areas people from Delhi and other places go but there are no organisations of any kind?

A. No.

Q. In Delhi how many societies are there for social reform work?

A. I think about half a dozen belong to different religions.

Q. Is there no general society for various persons interested in social reform?

A. There is one Social Service League.

Q. Do you think it will not be very difficult to organise these vigilance societies in rural areas?

A. It will be difficult.

Q. For 10 years it will not be a practical proposition?

A. Not for a decade.

Q. So far as cities are concerned do you think that these vigilance societies will work satisfactorily?

A. I have said that they will be able to achieve very little.

Q. Do you mean to suggest that if this power of complaint is given to these official associations, general power now inherent in every member of the public should be taken away?

A. I do not say that.

Q. Should I understand that you are for allowing the power to remain as it is now and for the organisation of these societies particularly?

A. That is my point.

Q. So far as marital cases are concerned do you think that these should not be investigated by the police?

A. I think non-officials can do much better than the police.

Q. Or can magistrates also enquire?

A. Yes, but police can do a lot of mischief.

Q. Are you in favour of giving this power of initiation of prosecution to special magistrates?

A. First class magistrates may be empowered to initiate proceedings in proper cases and give sanction if complaints are brought to their notice.

Q. You are in favour of marital cases being made non-cognizable?

A. What I said was that police can do a lot of mischief in these cases. If you allow the police to enquire into all these cases instead of doing anything good they can create a lot of mischief and harass people. So I am not in favour of giving power to the police.

Q. In other words you mean to say that initiation must be made on the complaint of either parents of guardians of the girl or any of the societies that you have mentioned?

A. Yes.

Q. In paragraph 6 you have said that there is consummation before puberty among the lower classes. Will Dalitudhar Society help us in bringing cases to light if the law is infringed?

A. If the law allows us we shall try to do what can be done in that direction.

Q. You are doing educative work among the untouchables and if the law is infringed you will bring them to light?

A. Yes.

Q. In order not to strain the feelings among the husbands and wives would you make the marital offences compoundable?

A. Yes.

Q. With the sanction of the court or with its sanction?

A. If parties come to compromise without the sanction of the court I have no objection.

Q. There may be cases of serious injury to the girl?

A. That is why I have suggested that if it is done there should be divorce law within the Hindu society.

Q. Take the things as they are. Would you be in favour of making the offence compoundable without the permission of the court?

A. I do not think that after going to court relations can be harmonised except in very exceptional cases. Therefore I am in favour of allowing divorce proceedings to be taken. In fact I have not considered the point.

Q. Are you in favour of legislation fixing minimum age for marriage?

A. Yes. If I am to choose between the two I will choose the marriage legislation.

Q. You are also in favour of Age of Consent being fixed by legislation?

A. Yes.

Q. In order to help both these legislations or either of these would you like to have a system of registration of marriages, i.e., reports of marriages being made to some prescribed authority?

A. I think marriage register will do a lot of good.

Q. Who should be the authority to whom the report should be made?

A. Any first class magistrate may be empowered to keep the register. In municipalities and district boards the chairman may be entrusted with this work.

Mrs. Brijlal Nehru: You are in favour of divorce laws?

A. Yes, so as to give the girl an opportunity of marrying again.

Q. But in the present conditions of Hindu society is it possible for the girl to get another husband once she is divorced?

A. I think if the law allows that it will be possible.

Q. You think it is the law that is wanting and not public opinion?

A. I think public opinion is wheeling round it but within the next 10 years it will be up to the time.

Q. Before the next 10 years elapse what measure would you suggest of making the law effective?

A. The age of marriage should be raised to 16. It is for making the law that I have suggested that punishment should be made deterrent.

Q. What do you mean by deterrent?

A. I mean that punishment should be more rigorous and for a longer term. I am speaking of abduction cases.

Q. What about marital cases?

A. I do not think we can have any effective remedy.

Q. Supposing we make the punishment lighter than what it is at present?

A. That will be harmful because if the husband is prosecuted he will not allow the girl to re-enter his household.

Q. If the punishment is reduced to fine only?

A. It will have a restraining influence but you must give very wide publicity to the legislation.

Q. You have said that you would like the power of complaint to rest with everybody as it is at present. So far people have not taken advantage of it because the law is not generally known. According to your suggestion if the law is made public don't you think there is a chance of people misusing that power. For if a man has enmity against a certain person he will misuse this power and lodge false complaints.

A. The good will be much greater than injury.

Q. What about the prosecution of the case?

A. I do not want initiation power to the police. I would prefer an enquiry by a magistrate. I will amend my statement to this that all social service leagues of recognised status may also be given power if magistrates are not available.

Q. Can you tell us why so far this power which rested with the people was not made use of?

A. There is general inclination not to enquire into others' personal matters.

Written Statement of Mr. MIR MOHAMMAD HUSSAIN, Municipal Commissioner, Delhi.

1. People are getting awakened to the consequences of early marriages and early consummation of marriages and so there is a distinct demand for an advance on the present law.

2. (1) Retaining the law as it is, is not justified because cases of rape by husbands come to light in hospitals. Rape in extra-marital cases comes to light very rarely, but it cannot be said to be extinct as yet.

(2) The reason for making advance on the present law is obvious. Female health is gone down generally. People are themselves making voluntary efforts to delay marriages and it is high time when legislature should help them by making an advance on the present law.

3. Crimes of seduction and rape (outside marital state) rarely come to light, because the parents of the girls are always desirous of hushing them up on point of honour. Males always make amends so far as they can, partly on account of guilty conscience and mostly out of the fear of the drastic punishment that awaits them in court.

Police should keep a record of all underage girls with persons engaged in immoral trades, such as prostitution, brothel-keeping and procuring wives for husbands undesirable on account of old age, caste or health.

All agencies responsible for registration of births should co-operate in the matter of verification of the age of the mother with due regard to the law of consent.

In hospitals and maternity homes all cases of suspected irregularities should be reported at once to the person at the head for prompt action.

4. Yes, those husbands who have understood the amended law have taken care to abide by it—

(1) Sometimes by postponing the consummation.

(2) The law is not yet understood sufficiently widely to stimulate public opinion in any appreciable degree, but even then it may be safely assumed that public is not antipathic to the law.

(3) Marriages are often postponed till the girl has attained the age of 13.

5. In this part of the country puberty occurs generally at the age of 13-14 years. It occurs early in wealthy people and is retarded in poorer classes.

6. Cohabitation (outside marriage) is not common in my part of the country. The cases that come to light are generally committed by grown up persons and females are mostly widows and free women of loose character.

The cases that come to court are few and unfortunately often break down through the efforts of the lawyers or insufficient evidence.

This applies to all 1, 2 and 3.

7. The practice of early consummation of marriage before or at puberty cannot be attributed to religious injunctions among Mohammadans. A trace of its being due to religious injunctions can still be found among Hindus who believe that menstruation of a girl at father's house brings ruin to the family. I have heard this quite often, but do not know the authority, which I trust will be quoted by some liberal minded Hindu Gentlemen. So far as I am aware there is no caste penalty. Anticipated ruin is the only penalty to-day.

8. "Gona" is usually performed in this part of the country by Hindus and sometimes also by the Mohammadans in lower classes. In upper classes of Mohammadans the Nikah, the Wida and the consummation of marriage generally takes place simultaneously.

Occasionally cases occur in which Nikah is performed early to secure the match firmly or the wedding is delayed for monetary or family reasons.

The age of the girl is always above the minimum Age of Consent when consummation of marriage take place, i.e., she is 17/18 years old.

9. Among Hindus and especially among Shias puberty is not considered a sufficient indication of physical maturity to justify consummation of marriage.

Two years after puberty are considered desirable to elapse before actual consummation, so that her own and her of spring's health is not endangered. 16—19 is the age preferred for marriage of girls.

Nevertheless early consummation of marriage cannot be said to be extinct as yet from among Mohamadans.

10. Eighteen years is the age at which a girl may be considered to be capable of giving intelligent consent with full realisation of her immediate and future situation.

11. As already said these cases come to light rarely. I have personal knowledge of only one case in which an underage girl was ravished by a domestic servant and when married later on she never got any children.

12. Yes, I consider early consummation of marriage and early maternity responsible for frequent maternity, and premature births. This means increased mortality of children and mothers.

I consider it responsible for general deterioration of the race.

13. Development of public opinion in favour of extension of the Age of Consent is confined only to the educated families.

14. Among Mohammadans women are more keen on delaying the consummation till two or three years after puberty in cases when Nikas has been performed before puberty. Hindu women are still fond of early marriage, early consummation and early child-birth. Their eyes are now being gradually opened to the dangers which threaten the lives of their offspring.

15. I have no reply or suggestion to make.

16. Yes. Certainly at the age of 16 all normally developed girls show unmistakeable signs of maturity which will eliminate disputes about the age both ways.

17. I would rather not separate extra-marital and marital cases because the law cannot be too hard in extra-marital cases and in marital cases the continuation or repetition of the act enhances its intensity and the consequences are far-reaching often going down to the next generation.

In practice only a few cases come to light and the legislature will have to depend mostly on the existence of the law or on the effect of the punishments meted out to offenders in cases convicted.

Even the existence of a milder law for husbands will indicate the tendency of the legislation to deal lightly with the marital cases and the persons concerned, the police and the magistracy all will respond to that notion and the consequences will be the more or less disregard of the law.

I would prefer the 10 years' rigorous imprisonment for both marital and extra-marital cases and leave the leniency to the merits of the case as it may come up before the court.

18. I would suggest that the offence should be made cognizable and the enquiry be made by Sub-Inspectors in both cases and in marital cases not by head constables.

19. I would suggest that very faithful co-operation should be demanded from hospitals, private practitioners and midwives. All persons engaged in midwifery must be carefully registered and whenever they are found to have committed abetment of concealment of a crime of this nature they should be very severely dealt with.

Village chowkidars, parents and other persons who inspite of direct knowledge fail to expose the crime should be carefully traced and punished.

Lady health visitors and officials engaged in registration of births should always facilitate verification of the age of the mother at the time of pregnancy.

Informants should be liberally rewarded in cases convicted.

A new section should be added to deal with the concealment of the crime:—

Whoever conceals or fails to expose the crime of marital or extra-marital nature as described in sections 375-376, Indian Penal Code, shall be liable to punishment which may extend to rigorous imprisonment for two years or with fine or with both.

20. Minimum age of marriage fixed at 16 will produce better and speedy result but will necessitate very judicious administration in the beginning.

21. I would prefer to rely on penal law for the present. Social advance is always retarded in such cases by priests and interested menials.

Oral Evidence, dated the 11th October 1928, of Mir MOHAMMAD HUSSAIN, Municipal Commissioner, Delhi.

Chairman Do you belong to the Suni Jamat?

A. No, Shia.

Q. I do not think there is any large difference between Shias and Sunis in these matters?

A. In the laws of marriage there is absolutely no difference.

Q. In answer to question No. 9 you want a new section to be added. You suggest "Whoever conceals or fails to expose the crime of marital or extra-marital nature as prescribed under sections 375 and 376, Indian Penal Code, shall be liable to punishment which may extend to rigorous imprisonment for two years or with fine or both". There is a section in the Criminal Procedure Code which makes it obligatory on the general public to give information with regard to certain crimes. Would you put it under that?

A. It automatically comes under that.

Q. Don't you think it comes now within the case of abetment?

A. It does come.

Q. This section does not require knowledge but really you want people who know and yet conceal it?

A. Yes.

Q. Do you think it will be easy to bring knowledge of the facts home to any one in particular?

A. Certainly, it will not be difficult at all. In a crime of that nature especially in marital cases people do it with all their knowledge.

Q. Do you mean the abettors? They may be parents.

A. Such offences do take place although the parents may say that they do not know. It is the parents who provide the necessary privacy.

Q. In answer to question 20 you suggest judicious administration in the beginning. Does that mean dealing leniently for the first few years?

A. I left it out advisedly because if we minimise the law in any form it would spoil the moral effect that I want to have.

Q. Supposing the law is not made sufficiently widely known and some cases have to be dealt with in early stages should we exercise extreme punishment with great caution?

A. Yes, proper consideration should be given to extenuating circumstances.

Mrs. Beadon: In reply to question 3 you have said that in hospitals and maternity homes all cases of suspected irregularities should be reported at once to the person at the head for prompt action. I do not quite understand what you mean by suspected irregularities?

A. Suppose a case comes to a subordinate doctor or a midwife she should at once bring it to the notice of the head of the institution.

Q. Which cases?

A. Cases in which it is suspected that the girl is immature and that consummation has taken place.

Q. If that happens the only result will be that people will be prosecuted and then in future girls will not be taken to that home and the girls will not be given professional assistance which they require. That is still more dangerous because that will send girls to quacks?

A. That may sound a little difficult but in actual practice it will not be so difficult. If you do not report cases in hospitals no cases will be reported at all.

Q. If as a result of taking to the hospital parents are to be punished then they would not take them to hospital but will take them to unqualified practitioners. Is it not so?

A. If unqualified practitioners fail to report the cases they will be committing the offence of abetment.

Q. But who will know that such and such crime has been committed?

A. The crime must come to the proper quarter somehow and we expect that our crime investigating agencies are efficient enough to bring them to light. No doubt there will be difficulties.

Q. Can you give any cases in which early marriage and early consummation has within your knowledge resulted in premature or still birth?

A. Many cases. I have seen girls of tender ages marrying grown up boys. A girl of 10 or 11 married a boy of 18 or 19 and the result was that they did not get any child and broke down in health.

Q. How long after?

A. It was noticed within two or three years.

Q. Did those cases occur recently—I mean within the last 5 years?

A. Yes. I know 4 cases.

Q. You mean they were all below 13 or 14?

A. Those were cases in which no children were born: these were between 12 and 14.

Q. How many cases of 11 and 12?

A. Two.

Mr. Mitra: You are for fixing the marriage age at 16 and you would prefer to rely on penal laws for this?

A. Yes.

Q. In paragraph 8 you say that in upper class Mohammadans nikah and consummation of marriages generally take place simultaneously. What is the age in upper classes for marriage?

A. There is no fixed age but the customary age is ripe enough.

Q. In paragraph 4 you say that marriages are often postponed till the girls attain the age of 13 years. So in these cases consummation takes place at 13?

A. I mean that sometimes it happens that a further finds some desirable son-in-law or they find a very desirable daughter-in-law and the thing is that if they wait marriage may not be possible. So they make nikah and the result is that the parties are formally engaged according to the religious sanction. Then they wait till the girl is sufficiently developed.

Q. If we have marriage legislation you would fix the age at 16 and if we have no marriage laws you would fix the Age of Consent at 16?

A. Yes, and in extra-marital cases at 18.

Q. In paragraph 18 you say that offences should be cognisable and the enquiry should be made by a Sub-Inspector of Police. You do not mean by a lower police official? At present the law requires the Inspector to make an enquiry in marital cases.

A. Inspectors have very wide circles and sometimes they are at a great distance and no action can be taken. By the time the Inspector arrives the evidence is suppressed or compromise is arrived at.

Q. So you want that prompt steps may be taken to investigate these cases?

A. Yes.

Mr. Mohamed Yakub: You are a member of the Municipal Committee, Delhi.

A. Yes.

Q. Are you also Secretary of the Anglo-Arabic College, Delhi?

A. Yes.

Q. Don't you think that raising the Age of Consent or fixing a minimum age for marriage would be objected to by Mussalmans as an interference in religion?

A. No.

Mr. Bhargava: You have said that there should be judicious administration of the law. Do you wish that unless and until this law is made widely known so that every person may know that it is a crime, it should not come into force?

A. I want it to come into force as soon as possible but the magistrates should try the cases very judiciously.

Q. What do you mean by judicious?

A. I mean we should not rush the proceedings.

Q. Do you think that the present state of things is more due to ignorance of parents than to exigencies?

A. I do not think exigency comes in, it is the custom of people.

Q. In criminal cases when you are going to sentence a person do you not think that some criminal intention is necessary?

A. I do not belong to the judiciary but ignorance of law is no excuse.

Q. In answer to question 20 you refer to the age of marriage. You say the minimum age of marriage fixed at 16 will produce better and speedy results but will necessitate more judicious administration in the beginning. You are referring to the law of marriage?

A. I did not pay much attention on this point but what I mean is that the law of the Age of Consent should also be judicious.

Q. You want to make the parents guilty if they bring about marriage before the age fixed by law?

A. Yes.

Q. Would you like to extend the penal provisions to parents, if there is breach of the consent law?

A. Yes.

Q. Don't you think in many cases the father or mother may not know about consummation till after it has taken place?

A. Privacy in our families cannot be obtained unless parents or other females arrange for it. In fact they do it themselves.

Q. Do cases not happen in which child girls are called from the houses of their parents because the husbands is ill or because there are festivities in the house and not for consummation?

A. Yes, it can be.

Q. Supposing anything happens at that time, would you make the parents liable?

A. It may or may not be. That depends on the circumstances.

Q. What punishment would you propose for those parents? 2 years or fine or both.

A. Yes.

Q. Would you punish the girl also if she conceals?

A. The thing is that girls generally do not volunteer themselves for such a sort of thing. It is generally done with some sort of compulsion.

Q. If the girl is between 14 and 16 and a consenting party would you punish her?

A. Yes.

Q. In paragraph 19 you say village chowkidars, parents and other persons who in spite of the direct knowledge fail to expose crime should be carefully traced and punished. Do you wish to lay the obligation of reporting on the general public or on the village chowkidar or on the parents or on whom?

A. Generally on everybody but specially on village chowkidars who are bound to know.

Q. I want to know categorically those persons on whom you would lay the responsibility for reporting. Would you include patwaris or lumberdars?

A. I can put them in if you like.

Q. Would you place it on the neighbours also?

A. Any person who comes to know it and who has reason to be sure that the offence has been committed. If I am a neighbour and if I know that such a case has occurred, it is my duty to bring such a case to light.

Q. What would you provide in the case of a person who knows that such a case has happened, but does not report?

A. Maximum punishment of two years.

Q. You are of the view that marital cases should not be leniently treated. Is that correct?

A. Yes.

Q. You think that in no case in which it is made punishable by law should fine be the only punishment. Is that so?

A. Yes.

Q. In proper cases would you leave it to the court to deal with the offender according to the nature of the crime?

A. Yes.

Mr. A. Ramaswami Mudaliyar: Do you feel that in these marital cases the offence is so great that every possible step should be taken to prevent it?

A. Yes.

Q. Do you feel also that in many cases the parents of the boys or the girl are responsible for the commission of the crime?

A. Yes.

Q. You have suggested that the burden of proving that the parent is not really liable must lie on the parent. You have suggested also that everybody who comes to know of the offence must report. You might be aware that there is a section in the Indian Penal Code, under which certain offences ought to be reported under the following circumstances. The section runs: "Every person whether within or without the presidency towns aware of the commission of, or intention of any other person to commit, any offence punishable by any of the following sections of the Indian Penal Code,

namely, 121,.....shall in the absence of reasonable excuse the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate". Therefore if it could be proved that a person knows but did not report, he can be accused and punished. The burden of proving that he did not know is on him. Would you bring this offence under that category?

A. Yes.

Q. If to this particular section 376, Indian Penal Code, is added, your purpose would be satisfied. You suggest that punishment in marital cases should be 10 years. At present the punishment is 2 years. Do you think that the punishment has failed in its object?

A. Yes; because very few cases have turned up.

Q. You have said that the very existence of a milder punishment has made people think that the offence is not really an offence. Is that so?

A. I have not said so. I simply said that the offence should be taken serious notice of.

Q. Is it the two years' maximum that has led to this state of affairs, or is it due to other causes?

A. It is due to the existence of the differentiation between the marital and extra-marital cases. The Magistrates think that because such a differentiation exists marital offences should be treated more leniently.

Q. Do you think that more than 2 years should be given for such cases?

A. Yes.

Q. Would you make any difference between the ages of the girls; for instance, would you give one punishment if the girl is 14 and a lighter punishment if the girl is between 14 and 16?

A. I would leave that to the discretion of the Court.

Mr. Kanhaiya Lal: Are you a legal practitioner?

A. No; I am a businessman.

Q. What is the usual marriageable age of girls amongst Mohammedans?

A. The usual age amongst the upper classes is between 16 and 19. Amongst the lower classes they marry whenever they can, 11, 12, 13, etc.

Q. When the marriage takes place before puberty, is consummation postponed amongst the lower classes?

A. Yes; consummation is generally postponed till puberty is attained. Amongst the lower classes the parents want to get rid of the daughter. They have also got a different idea of marriage and consummation is not always postponed.

Q. You say in paragraph 9 that amongst Muhammadans and Shias generally puberty is not considered a sufficient indication of physical maturity to justify consummation of marriage. Is there any indication other than menses to indicate that puberty has sufficiently advanced. Are you referring to the system of Jirga?

A. No; it is a custom.

Q. Is there any feeling amongst people that consummation of marriage is a marital right? Is it the opinion amongst both Hindus and Muhammadans that after a marriage has taken place consummation of marriage is a marital right?

A. Yes.

Q. Is consummation before the prescribed age more or less regarded as a technical offence? Will people regard it as offence with no moral depravity attached to it because it has been committed in exercise of the marital rights?

A. Yes; but in my opinion people should attach more importance to the offence and consider it very serious.

Q. If the law is broken, will not there be a certain amount of sympathy with the accused by reason of the fact that the offence has been committed in exercise of the marital rights and therefore there is no moral depravity attached to it?

A. I feel that it is a moral depravity, and people must be taught to respect the law.

Q. Do people consider it immoral?

A. Yes.

Q. You said that there should be severe punishment in such cases. Do you realise that severe punishment to the husband in such cases means severe punishment to the wife?

A. That thing always happens. For instance punishment awarded to the son is punishment on the father.

Q. In a wife it is particularly so because she cannot marry again. Amongst Mohammedans also she cannot re-marry without the consent of the husband if he is alive, is it?

A. Yes.

Q. Do you realise that if the husband is sent to jail in consequence of the complaint it is not likely that the husband when he comes back from jail would like to see the face of wife who has been responsible for all the trouble? And may discard her for life and marry another woman?

A. That is why I feel that the law should be more severe so that these things should not happen.

Q. Am I to understand that you are prepared to allow these women to suffer in order that an example may be made of these cases to deter others?

A. I expect that the severity of the punishment would render the offence almost impossible. I would rather sacrifice women in 10 cases to make the men law-abiding.

Q. Would you in such cases allow the case to be compounded where the husband and the wife so desire?

A. No.

Q. Will you allow the case to be compounded with the sanction of the Court?

A. I think that compromises of this nature will spoil the whole effect. I consider it very dangerous and the law must therefore have its way.

Q. Do you not consider that a severe punishment may defeat its own object, and that cases may not be brought to light?

A. That is bound to occur in the case of any offence.

Q. Will it not be especially so in case you give severe punishment for offences of this character?

A. My opinion is that elimination of the crime which I am aiming at, will be the result. Suppression of offences will occur even if the punishment is 2 months. But if you give an exemplary punishment in one or two cases that will deter the commission of the offence.

Q. Do you not think that if the punishment is very high both the parties may collude and suppress information.

A. That is exactly what I have tried to make it impossible for them to do. I have provided safeguards so that any party may report such cases.

Q. Are you in favour of having vigilance societies or giving the power to social reform organisations to look after these cases?

A. I think they can never be efficient.

Q. Another suggestion that has been made is that instead of these cases being tried in ordinary courts, matrimonial courts might be constituted. What do you think?

A. That is a matter of administration. The question was not before me and I have not therefore considered it.

Q. If there is a law fixing the age of marriage and a law fixing the of Consent, would it not be desirable to have a system of registration of marriages so that a record might be maintained of all marriages giving the names, ages and other particulars of the marrying parties, to serve in case of need?

A. Registration of marriage will be useful and helpful. But in my opinion no person should be inconvenienced because there is no registration centre near by. Persons who ordinarily keep government records might register these marriages also. It should be centralised either in the police station or the Tahsil office.

Q. Would you place the obligation of reporting the marriages on the parents or the priests?

A. I would place it on all parties including the priest.

Mrs. Brij Lal Nehru: Can you tell me why so far cases below 12 years have not come to court while the punishment is 10 years' rigorous imprisonment, though they have occurred and are occurring even now?

A. Because the cases are very few.

Q. Would you say that cases below 12 do not occur because of the existence of this law?

A. I should think so.

Q. But maternity hospital reports do not say so.

A. I do not know that.

Q. I believe you will agree with me when I say that the only people who are likely to know anything about the occurrence of these offences are the friends and relations of the parties who will be most reluctant to report such cases. Under the circumstances who will come forward to report them?

A. Sometimes the sweeper, the Chaukidar or the Constable.

Q. Do you think that the evidence of a sweeper or Chaukidar would be relied as against the evidence of the neighbours and others who are likely to be more friendly with the parties and therefore likely to give evidence against the prosecution?

A. But the officer taking cognisance of the offence will be responsible to sift the evidence.

Q. Do you not think that it is difficult for the officer who holds the enquiry to do so if the friends and neighbours and relations are all against the prosecution? Isn't the evidence likely to be very poor under the circumstances and is it not possible for the members of the family to suppress evidence?

A. It is possible, but not probable. You cannot bribe so many persons.

Q. When the idea of social reform becomes popular and the punishment is made lighter, do you not think that relations will be encouraged to bring to light such cases?

A. My personal opinion is that they will never do it.

Q. If these cases are made punishable with 10 years they will become sessions cases and will therefore involve great delay. Even to avoid that delay do you not think that it would be better to have a lighter punishment?

A. The question of delay is a matter for the judiciary. The speedy disposal of cases is not for the witness to go into.

Q. What do you mean by saying that the police should keep a register of girls of under age kept by persons engaged in immoral trade?

A. I have knowledge of certain institutions or persons who are keeping and training girls for immoral purposes and selling them to undesirable husbands.

Q. Do you mean to suggest that there are agencies which supply wives to aged people?

A. Yes.

Q. What are the agencies?

A. Certain people among Nais, and some Brahmins and some other persons have got a regular business of this character.

Q. Do they provide wives from the same caste?

A. Caste is eliminated. They usually go to the Native States and buy the girls and say that the parents of the girls have them to study dancing, music and so on under them. They are more or less procuring agencies.

Q. Do they sell these girls openly?

A. No

Q. How then can the police keep a register?

A. The Police should find out such cases.

Q. Is not the sale of the girls an offence already?

A. Yes; but no sale actually takes place. The girls are brought from different places under the pretext that they are to be taught dancing, music and so on. And sometimes the names of fictitious persons are given purporting to be the parents or guardians of the girl. This sort of traffic in girls goes on unmolested.

Q. If such registers are kept by the police what use would you like to make of them? By merely keeping such a register you cannot save the girls.

A. Certainly not. If you penalise the whole thing, then the police will have something to go upon.

Q. When there is no open sale and there is a semblance of marriage, whom can you penalise?

A. If such a register is maintained it is not very difficult to know when girls are under age and they can take action.

Written Statement, dated the 27th August 1928, of Seth L. N. GADODIA, Chandni Chowk, Delhi.

The following answers are submitted by Seth L. N. Gadodia and Mrs. Gadodia to the Questionnaire sent out by the Age of Consent Committee.

1. No general dissatisfaction has been experienced by the public as people know very little of the law as to the Age of Consent. There is no doubt that whatever public opinion has been educated on this subject, there has been unanimous support forthcoming for raising the Age of Consent. Some persons are opposed to the proposed change on religious grounds, while others believe that in these matters which deal with the private family life of individuals, progress cannot be secured by legal enactments.

2. In our opinion the Age of Consent in the case of extra-marital cases, must undoubtedly be raised. It is impossible to believe that a child of fourteen can give intelligent consent with any true knowledge of the consequences of such an act. If she is considered a minor up to the age of eighteen in all other business concerns, it is very anomalous that the law should consider a child sufficiently responsible to give her consent in what is the most vital step in the life of a girl.

But we are not in favour of raising the Age of Consent in marital cases; firstly, we believe the law will remain a dead letter as it has remained hitherto; secondly, if enforced strictly it may do more harm than good as it is likely to give a handle for prosecution to the subordinate officials of the Police who are liable to make misuse of it.

3. Crimes of seductions are frequent in this part of the country. So far as we are aware, the amendment of the law made in 1925 has not made much improvement in this matter.

4. The amendment of 1925 so far as we are aware has had little or no effect, in either postponing the consummation of marriage or in putting off marriage beyond thirteen years. Nor any good is expected by increasing the Age of Consent in marital cases. The sole remedy, in our opinion would be to penalise the early marriage.

5. As far as Marwari Community is concerned the usual age is anywhere between twelve and fourteen. We can say nothing about other communities or castes.

6. We believe cohabitation generally takes place soon after the attainment of puberty stage.

7. Members of the orthodox section of Hindus who are fast decreasing in number do hold the view that marriage should take place before puberty, but we do not believe they have any religious sanction behind them. The practice in our opinion is due to social degeneration.

8. The Gaona ceremony is common in this part of the country. It mostly takes place soon after puberty but before puberty as well.

9. In our part of the country three years should be the minimum period after puberty to justify such consummation.

10. The age would differ with the different girls according to their education and general intelligence but eighteen years can be taken as minimum.

11. There are numerous instances, specially in Marwari Community which have come to our knowledge where cohabitation before full development of a girl has resulted in injury to her health or body or prejudicially affected her progeny.

12. There is no doubt whatever that early consummation and early maternity are very largely responsible for these results.

13. In recent times public attention has been a good deal drawn to reform in this direction with most useful results but it must, however, be confessed that the development is very largely confined to the educated and advanced classes.

14. This is unfortunately true of the majority of mothers in this part of the country.

15—16. We have already partly answered these questions. If the Age of Consent is raised it would be much easier to detect a minor for the purposes of the law in this respect than it is at present.

17. We strongly favour the separation of marital and extra-marital offences into different offences. We are not in favour of heavy sentences, unless physical injury has resulted in the case of marital offences.

18. We would certainly make a difference in the procedure of trials, in the case of marital offence we would advise holding trials in camera and the execution of cases with the least possible delay.

19. We are unable to answer this question.

20. We strongly believe that legislation fixing the minimum age of marriage is much more likely to be effective than the fixing of a higher Age of Consent in marital cases. We are aware that for sometime to come any considerable advance in the minimum age of marriage by means of law is not likely to be effective among the masses of population. But legislation in this direction is more logical than in the other. In this part of the country we believe that the public opinion in spite of protest of few orthodox persons, will favour legislation of the fixing of a minimum age for marriage.

21. While not minimising the importance and value of Social and Educational propaganda we do hold that strengthening the legislation in this direction will certainly mean strengthening the hands of the Social Reformers.

Oral Evidence of Seth L. N. GADODIA, Chandni Chowk, Delhi.

(Delhi, the 11th October 1928.)

(Vernacular.)

Chairman: Are you connected with cities, or villages also?

A. I know more about cities.

Q. You have said in your answer to question No. 6 that cohabitation takes place before puberty. In what class of people does it take place?

A. Marwaries particularly. It takes place in other castes also.

Q. Are you Agarwal?

A. Yes.

Q. What is the usual age of puberty?

A. Between 12 and 14.

Q. Have you seen any cases where consummation takes place below 13?

A. A girl is married at 11 and cohabitation generally takes place at 12.

Q. Do you think it does great harm?

A. Yes.

Q. In answer to question No. 20 you have said that for sometime to come any considerable advance in the minimum age of marriage by means of law is not likely to be effective. What is the reason?

A. I mean the orthodox people will spread agitation against it and at the end it will be accepted.

Dr. Beadon: In answer to question No. 11 you say there are numerous instances where cohabitation takes place before full development of the girl. For the last 2 years how many cases have you noticed?

A. About 10 or 15 cases.

Q. The children and the mothers have both suffered.

A. Yes. The arms and legs have been distorted in many cases. They lose vitality.

Q. At what age does that take place?

A. Where consummation takes place at 11 or 12.

Q. They suffer at the time of child birth?

A. Even if they do not have children still they seem to suffer.

Q. Do the children survive?

A. A large number dies.

Q. What do you think about those who survive?

A. They are always sickly. This has hampered the progress of the Marwaries.

Mrs. Nehru: Of the two alternatives which would you like better, increasing the Age of Consent or fixing the age of marriage?

A. I am not against increasing the Age of Consent but fixing the age of marriage would be more useful. In intra-marital cases, however, the Age of Consent should not be increased.

Q. Supposing there is no age of marriage, would you like to increase the Age of Consent only?

A. I am not against it, but it won't be effective.

Q. Why?

A. There will be many difficulties about giving punishment.

Q. To whom will you give the punishment?

A. After the age of majority the boy may be punished and before that the parents may be punished.

Q. If the Age of Consent is fixed at 14 the law won't be effective even then?

A. No.

Q. If we take a bond from the parents that the girl and the boy shall be kept separate till the Age of Consent as fixed by law is reached will the law be effective then?

A. It will be very expensive and difficult to enforce.

Mr. Mitra: What age do you suggest for marriage?

A. 16 years complete and for boys 18 years.

Q. What Age of Consent do you fix for extra-marital cases?

A. 18.

Q. You will have two separate offences, marital and extra-marital.

A. Yes.

Q. You are not in favour of heavy sentences unless real injury is proved.

A. No.

Q. There has been suggestion that in marital cases the punishment may be confined to fine only. Do you agree?

A. I do.

Mr. Kanhaiya Lal: You would fix the Age of Consent for marital cases at 16 and extra-marital cases at 18.

A. Yes.

Q. Can you suggest any methods of making the law effective or bringing cases to light?

A. There must be women societies. Their number should increase. Education must advance. Meetings must be held to educate public opinion.

Q. Would you like to give the women's associations the right of complaint?

A. Everybody should have the right of complaint.

Q. Who should investigate? Will the panchayats do?

A. I think they will accept the responsibility. Panchayats will take upon themselves this work.

Q. Would you make the offence compoundable?

A. No, some punishment must be given. There should at least be fine.

Q. If the boy is of 30 years and the girl is of only 12 years, do you think fine would do in such cases?

A. Fine is enough. The real remedy is the prevention of early marriages.

Q. Would you give the discretion to the court in regard to fine or imprisonment?

A. In marital cases I am only in favour of fine.

Q. Is there any custom of *Ratjaga*, i.e., celebration of consummation on the first day after return from the marriage?

A. This custom is now existent in villages only. In the cities the people have realised that this custom is bad.

Q. Is it a fact that the husband and the wife are closed in a room?

A. No.

Q. Is *Gaona* ceremony performed?

A. Yes.

Q. Are you in favour of registration of marriages, giving the names of the parties and their parentages and the ages of the couple?

A. No. With the increase of education registration is becoming unnecessary.

Q. But under the present circumstances when India is very backward in education would you like this system?

A. Yes, I will be in favour of it. There is no harm.

Q. Who should be the registering authority? The Tehsildar or the Municipality or the District Board?

A. Municipality is better.

**Oral Evidence of Maulana MAZHAR UD-DIN, Editor, "Alaman",
Delhi.**

(In Urdu.)

(Mr. Shah Nawaz presided.)

Mr. Shah Nawaz: At what age do girls in Delhi attain puberty generally?

A. Generally between 12 and 15.

Q. Amongst Musalmans at what age are the marriages of the girls generally consummated?

A. Amongst the Musalmans, excluding the lower classes, consummation of marriage takes place after puberty, at the age of 13 or 14.

Q. What is the age of marriage amongst the lower classes?

A. The lower classes such as the Dhune and Kunjadais marry their girls at 7 and 8; and sometimes even at 3 and 4.

Q. What do you think should be the age of marriage for girls?

A. Girls should be married after the attainment of puberty.

Q. Do you think we must resort to legislation with a view to fixing the age of marriage?

A. No.

Q. Do you not want any legislation?

A. I do not advise any legislation. Social propaganda and education are the best methods to achieve the object in view.

Q. Do you want compulsory education for girls as well as boys?

A. Yes; I would have compulsory education both for girls and boys.

Q. What do you think should be the Age of Consent in marital cases?

A. It should be after puberty. Generally it should be the age of 14 or 15.

Q. Do the people know that there is such a law as the Age of Consent law, and do they follow the law?

A. The present law of 13 has been a dead letter. Nobody has observed it.

Q. Will you please give us the reason why you do not want legislation.

A. In my opinion the number of cases will increase. And further Musalmans will think that this is an infringement on their religion, and that the pledge of Queen Victoria has been violated. Further there may be some people who may be compelled to marry their girls immediately after puberty, but the law will interfere with them.

Q. Will some of the girls go wrong if they are kept unmarried till 14?

A. Yes; in Bengal some girls of the lower classes will go astray.

Q. Will such cases be large or small?

A. Their number will not be large.

Q. Amongst Musalmans are there cases of pre-puberty consummation?

A. If a girl is consummated before she attains puberty the shariat looks down upon the idea.

Mr. Yakub: Does cohabitation immediately after puberty lead to injury?

A. Yes, to a certain extent.

Q. If we find that except law there is no other remedy to put down this evil effectively, don't you think it is the duty of the Government to enact a law?

A. To fix an age for marriage is against the shariat and it should not be enacted. Government should allot funds for propaganda work.

Q. During the time of Khalifas they did some acts which were against shariat but because they were for the benefit of the Musalmans they were done.

A. Those acts were neither against nor in accord with shariat.

Q. If certain acts are doubtful and Islamic kings allow such things, there is no harm?

A. No.

Q. If Government enacts a law which is for the benefit of Musalmans and which is not directly against the shariat will you be in favour of it?

A. I do not think there will be any objection but I think this question is against shariat.

Q. Are you in favour of raising the present Age of Consent to 14?

A. No. It will be ineffective and I think propaganda is the only means of bringing about reform. There should be no law either for marriage or for consummation. I am in favour of propaganda work by education or by other means.

Q. If girls of 13 or 14 become mothers, will there be any injury to them or to their progeny?

A. Yes, there will be injury but these things should not be stopped by law.

Q. If propaganda work may not be successful even then this evil may not be stopped by law?

A. I am of opinion that by law there will be more harm than good.

Q. You are editor of the Urdu newspaper 'Alaman'?

A. I was its editor until recently but now I have a hand in shaping its policy.

Q. Where did you get your education?

A. At Deoband. I have got a sanad of completion of the course from Deoband.

Pandit Thakurdas Bhargava: You have said that passing of any legislation on this subject will be against the Queen's Proclamation. There is a section in the Government of India Act that if a member of the Legislative Assembly wants to bring in any such law he can do so by taking the previous sanction of the Governor General. On this basis the Age of Consent law was passed in 1891 and in 1925. Did any Anjuman or society raise any objection or did they pass any resolution protesting against it?

A. The Mohamedan members in the Assembly did not know the shariat fully, therefore no objection was raised.

Q. There are certain things in the British law which are not permitted by Mohamedan law?

A. If a woman conscientiously accepts Islam she remains the wife of her previous husband. Such things are decided according to Dharm shastras and not according to Islam.

Q. Do you think the spirit of Islam is that healthy children be procreated?

A. Yes.

Q. One way of doing it is by propaganda and the other is by law. You think by law it will be forcing it upon the public?

A. Yes.

Q. Are you in favour of compulsory education?

A. Yes.

Q. That is also forcing something upon the public?

A. There is difference in compulsory education and law of marriage. In the case of education shariat has given full liberty.

Q. But marriage is also permitted at any age?

A. No age is fixed for marriage and if you fix any age it will be an interference.

Q. There is a law that children shall be compulsorily educated from 6 to 11 years and similarly marriages can be penalised up to certain age?

A. There is full liberty of marriage at any age and when you penalise it below a certain age it would be against the spirit of Islam.

Q. Can you visualise any time in future when by propaganda people will marry their girls at 15 or 16?

A. You have had the experience of law also, it has been a dead letter.

Q. But that was ineffective. If there is a marriage law it will be effective?

A. If there is a marriage law there will be interference by police.

Q. If your Anjuman is given powers to bring cases to light, and if exemptions are provided for suitable cases, would you agree to it?

A. If exemptions are provided, there is no police interference and organisations are authorised to bring cases to light, there will be no objection to such a law.

Q. Under these circumstances what age would you fix?

A. 15 or 16.

Mr. Mitra: Were you ever in Bengal?

A. Yes, I was in Bengal in 1919. I was in Calcutta and I went to Eastern Bengal also.

Q. You must have seen that there is early marriage and there is pre-puberty consummations among the Mohamedans?

A. Yes, unfortunately it is true.

Q. Is it against Islam?

A. Yes.

Q. Did you preach against it?

A. I wrote in papers against it.

Q. Papers can be read by those who are literate. Had it any effect in putting off consummation?

A. I cannot say.

Q. Did you not infer that by propaganda work it is very difficult to reach the uneducated people?

A. No, if it is done properly through religious people it will carry great effect.

Q. Don't you know that there are many maulvis who always preach against it and yet there is no effect?

A. There is some effect.

Q. Do you not consider that in spite of propaganda among the poor classes of Hindus and Mohamedans there is not a single case where the marriage takes place after puberty?

A. I think if propaganda is done on behalf of Government it will have great effect. If Government paid money to mullahs and maulvis and asked them to preach against it it will have effect. This sort of social propaganda will be very helpful.

Q. As an ideal you suggest propaganda but if along with it there is legislation, it will help propaganda work?

A. If there is a law there will be difficulties.

Q. You think reform is very necessary but you are afraid of the difficulties if there is a law?

A. Yes.

Q. What age do you recommend for extra-marital cases?

A. It may be raised to 20. The higher the age the better.

Q. If exemptions that you suggest, are provided then cases of breach of law may be decided by special matrimonial courts consisting of one Judge and 2 non-officials as co-Judges. Do you think it will be better?

A. I think such cases should be referred to the members of the community and there should be members of panchayats.

Q. What punishment should be provided for breaches of the marriage law if it is enacted?

A. It should be fine only.

Oral Evidence of Khawaja HASSAN NIZAMI, Delhi.

(Delhi, the 29th January 1929.)

(Vernacular.)

(Khan Bahadur Mian I. B. Kadri presided.)

Mr. Kadri: Are you the Sajjada Nashin and Mutwali of the shrine of Hazrat Nizamuddin Aulia?

A. Yes, I am the Sajjada Nashin and Mutwali of the shrine of Hazrat Nizamuddin Aulia. I have several thousands murids in various parts of India.

Q. What should be the proper marriageable age for the boys and the girls?

A. The proper age for the girls should be 14 and 15. In Hyderabad they marry girls at the age of 17 and 18. Musalmans, as a rule, marry their girls after puberty except in Bengal and Bihar. In Bengal the Mohamedan girls are married usually early between 7 or 10 years of age and same is the case in Bihar. Marriages after the age of puberty in these parts of India are exceptions.

Mr. Shah Nawaz: What is the Quranic injunction regarding the age of a girl or boy.

A. There is no age limit for the girl or boy according to Quran. A girl or a boy can be married by his or her father or in the absence of father by grand-father and the marriage would be binding on the minor. A guardian of the minor girl can also marry her but the marriage can be repudiated by her soon after attaining the age of puberty. When a girl attains puberty her consent must be taken.

Q. The evil of early marriage and early consummation is very great and wide-spread. Can Government prevent it by legislation? If so, how?

A. If the general custom is that girls or boys are married before the age of puberty as in the case of Bengal and Bihar then the evil can be prevented and should be prevented by the Government or the King. Our Holy Book enjoins on men to treat women generously and kindly and if girls are married before the age of puberty generally then they are not treated well and as such there should be legislation to prevent early marriage and early consummation.

Q. What should be the minimum age of marriage and consummation?

A. The minimum age of marriage should be 14 and the age for consummation 15 or 16. Legislation fixing the minimum age of marriage is desirable having regard to the circumstances and status of girls in India. Without this the law of consent cannot be effective. I have no doubt in my mind that such a legislation would be beneficial to Musalman and should be made in the interest of Muslims in India.

Q. Would there be any agitation?

A. Some people would object to it but there should be no agitation on religious grounds because Muslim religion commands men to have the greatest regard for the welfare of their women.

Mr. Shah Nawaz: What is the cause of this early marriage?

A. Ignorance and illiteracy is the cause of early marriage. Where a sufficient number of Muslims are literate they do not resort to early marriage; where illiteracy is great they marry the girls before the age of puberty. Early marriages are the signs of Jahalat.

Mrs. Nehru: Are early marriage or early consummation causes of mother and infant mortality?

A. Yes, they are the causes of infant mortality. Girl mothers become weak and they die early. Many of them get tuberculosis and for this reason also early marriage and early consummation must be prevented.

Q. Have you got Hindus also among your murids?

A. Yes.

Q. Do you want matrimonial courts for the decision of matrimonial cases?

A. Yes. Courts should be established in big towns and in rural areas and law of marriage should preferably be administered through them. Legislation should deal with the law of marriage as well as law of consent and they should go together. In any case law fixing the minimum age of marriage is very necessary.

Q. Have you come across cases of girl mothers, and if so what is their condition?

A. Yes, I have come across girls who become mothers at the age of 13. Their condition is miserable. Their health as a rule vanishes. Life becomes to them misery.

Q. Which of the two alternatives would you prefer—the law of marriage or the law of Age of Consent?

A. I think both are necessary but if the law of marriage is not possible then only the Age of Consent law may be passed but in my opinion marriage law will be much more effective as this is the only law which will effectively prevent early consummation.

Q. If marriage law is not passed, can you suggest any measures by which the Age of Consent law may be made more effective?

A. Religious leaders and Kazis may be given power to bring cases to light and administer the law. I want that power should be given in the hands of Kazis as it used to be during the ancient Mohamedan Kings. Kazi should be the judge for the trial of all such cases.

Q. Would you like to appoint a committee who may do propaganda work and bring cases to light?—It may consist of members who are acquainted with the inner feelings of the people.

A. I think Kazis would be better.

Q. What age do you recommend for marriage of girls?

A. 14 or 15.

Q. What age do you recommend for Age of Consent?

A. The same—14 or 15.

Q. What age do you recommend for extra-marital cases?

A. It may be 18 or 20.

Pandit Thakurdas Bhargava: Have you been able to know what is the opinion of women—do they want late marriages?

A. They are subject to environments and they do not know what is the object of marriage. They do not understand the consequences. I have had very little occasion to talk to them but I think they are in favour of the law.

Q. Will people generally accept the law?

A. If they are made to understand they will accept it.

Q. What should be the punishment if parents marry their daughters before the prescribed age?

A. The punishment may be six months' imprisonment but it may be something deterrent. *Krathris* may be asked by religious people to excommunicate those people who break the law.

Q. If a law is passed, should the Crown be prosecutor or private persons be prosecutors?

A. Crown.

Q. You mean Government should enquire into these cases.

A. Yes.

Q. Would you like to have the same law for both Hindus and Mohamedans?

A. Yes.

Q. If your suggestion is accepted and Kazis are appointed Hindus would not accept them and if Pandits are appointed Mohamedans would not accept them. When you want a law for all communities and all peoples in India why not have ordinary Courts?

A. Those who are against interference in domestic affairs will agitate and will think that Government is interfering in their religion but if the law is administered through Kazis and Maulvis they will not be against this measure.

Q. But Kazis and Maulvis are already against this law and you are going to appoint those people who are opposed to it?

A. That is how it can be done and opposition will be less in this way.

Q. If the party concerned is Mohamedan the Magistrate may be Mohamedan and if the party concerned is Hindu, the Magistrate may be a Hindu, or if 2 Mohamedans are appointed as jurors with a judge, will it be acceptable?

A. The latter will be more acceptable.

Mr. Yakub: You say that according to Quoran no age is fixed but for the benefit of Musalmans an age should be fixed?

A. Yes.

Q. If girls are consummated early there is injury to them morally, mentally and educationally?

A. Yes.

Q. You think it is a sin to consummate girls before puberty?

A. I think it is a step towards murder.

Q. According to Mohamedan law you say that laws should be equal for both men and women?

A. Yes.

Oral Evidence of Dr. (Miss) EDITH MARY BROWN, M.A., M.D., Women's Christian Medical College, Ludhiana.

Mr. Kadri: Are you in charge of the Women's Christian College at Ludhiana?

A. Yes.

Q. How long have you been there?

A. For 37 years.

Q. And you have come in contact with many Indian ladies both Hindus and Mohamedans?

A. Yes.

Q. What is usually the age at which girls attain puberty?

A. I think in the Punjab it is about 13.

Q. What is the age at which they generally marry among Mohamedans as well as Hindus so far as your experience is concerned?

A. I think in the Punjab people generally marry their daughters at 15 or 16 but there are exceptions who marry early.

Q. Have you come across any girl mothers who may have suffered on account of early maternity?

A. Very many.

Q. What was the nature of the injury suffered?

A. In one case there was rupture of the vagina. There are many such instances.

Q. Is it your opinion that the high infantile mortality and maternal mortality is due to early marriages?

A. I think it is due greatly to ignorance on the part of mothers to nurse their children. It is also due to frequency of labour, they get children one after the other at short intervals. It is very difficult to say whether it is due to these causes or to dais treatment. It is always difficult to tell what was the cause of death, but I think when a child is born at an early age, the child and mother die or they are very weak. There was another case of a girl of 16, she had 3 children and her whole vitality was sapped out.

Q. What, in your opinion, is the fit age for marriage and maternity?

A. I think 16 should be for marriage and 17 for maternity. I have been called in in several cases in Court to tell what was the age of the girl and whether she has had the signs of puberty. It is difficult to tell the age exactly, but you can see whether she is fit to go to her husband. If the parents are advanced enough to feel the harm and want to save the girls it is not difficult. That is the first step which might be taken to educate the people that it is harmful to marry girls at an early age.

Mr. Nehru: You say that you have seen first born children dying. Have you noticed that later children have better health than the first born?

A. Yes. Later children of the same mother are healthier. I think frequently the first child dies.

Q. The first child dies because of defect in the physique or because of want of proper bringing up?

A. That is difficult to say, but generally the girl mother has not sufficient milk to feed the child.

Q. At the time of delivery the child of younger mother is weaker than that of the elder mother?

A. That is generally the case.

Q. What was the age of the youngest mother you came across?

A. 12. The child died but the same girl had another child a year and half later and that one is alive.

Q. Was there any difficulty in the case of first child born at 12?

A. No, the child was very weak.

Q. Did the child die on account of weakness?

A. Yes.

Q. Was the mother Hindu or Mohamedan?

A. She was a Hindu and belonged to Sais class.

Q. Besides Ludhiana of what other places you have got experience?

A. I have been all the time at Ludhiana but cases come to me from all over India.

Q. I suppose you are in a position to say in what parts of the Punjab or India early marriages are most common?

A. I cannot say that.

Q. Are you in charge of a hospital also?

A. Yes.

Q. What is the class of people who come to that hospital?

A. We have free wards where mostly village people come but there are paid wards where people all over India come.

Q. What age are the generality of mothers who come to you at the time of first baby?

A. I think the generality of mothers at the time of first delivery are 17 or 18. There are cases of 14 and 15 but they are exceptional.

Q. Is it the same among the Hindus and Mohamedans?

A. Yes.

Q. Have you noticed any difference between Mohamedans and Hindus—difference of age, at maternity, health, etc.

A. There is not much difference.

Q. Is there any difference between the village people and town people?

A. In the case of village people maternity is earlier.

Q. Is there any difference between Hindus and Mohamedans in the villages?

A. No.

Q. Have you ever noticed consummation before puberty in any class of people?

A. I have had some patients who said so. When they were brought to me they were 16 or 17 and they were sterile. They told me that they were sent to the husband before puberty. Such cases are, of course, rare.

Q. There is a great difficulty in bringing to light cases of breach of the consent law. If obligation is laid on the doctors to report any cases within their knowledge, do you think they will be able to help?

Q. If we lay an obligation on the dais also because they are registered?

A. People would not go to such people where there may be an apprehension of their being reported. Doctors in the interests of their own practice would not like to report.

Mr. Mitra: What period you think should elapse between the first appearance of menses and childbirth?

A. At least 2 years.

Q. Do you find from your experience that girls in India mature earlier than girls in England?

A. Yes, a year or two earlier.

Q. You think this is due to climatic effect?

A. Yes, it is also due to conditions of life and environments.

Q. Do you think food is a factor?

A. Yes, it has some effect.

Q. Have you noticed that among the classes that practise early marriage, girls mature earlier?

A. I think so.

Q. Some witnesses said that after a certain age first child is difficult. What in your opinion is that age?

A. I think it is 30.

Q. You think 16 to be an ideal age for marriage?

A. 18 would be an ideal age but minimum should be 18.

Pandit Thakurdas Bhargava: Considering all things in India including purdah system, etc., can you say at what age a girl can realise full consequences of her act as regards sexual intercourse. At present some witnesses have said 18 before which consent may be regarded as no consent?

A. I think 18. She may realise the consequences but she is in the power of man and has not the power to stand. She has no power to resist.

Q. You have been pleased to say that a period of 2 years should elapse between puberty and marriage. It so happens in some parts of the country especially in Bengal and Madras that puberty comes on at the age of 11 or 12. Would you say 2 years should elapse in those cases also?

A. Then I say longer time should elapse.

Q. There is no essential connection between puberty and maternity?

A. Several things have to be considered.

Q. Then your opinion is that whatever may be the age of puberty, 16 is the safe age for consummation?

A. Yes.

Q. Have you seen any case in which, without maternity supervening, consummation by itself has proved very deleterious?

A. Yes, injuries are caused to vagina.

Q. If a girl of 12 goes to her husband don't you think the bodily development will be arrested?

A. Yes. That is one of the causes of bad development.

Q. Have you seen in any case in which as a result of early consummation mania has come in later life?

A. It is hysteria and not mania.

Q. You are of opinion that girls should not be allowed to go to their husbands before 16?

A. Yes.

Q. Have you had occasion to see the children of those young mothers?—Can you say whether they are deficient in intellect?

A. I have not noticed.

Q. People say that nature has so arranged matters that in the case of early mothers it is not the child who suffers but it is the mother who suffers. Is that your opinion?

A. My opinion is that first child is born unhealthy but later children are healthy.

Q. Is it a fact that in a case where maternity comes on at 17 or 18, the third or fourth child is better intellectually and physically than the first child?

A. I think at the time of subsequent children the mother is more experienced.

Q. You have said that it has been your experience that, in spite of protests from parents, husbands insist on their wives being sent to them. As a remedy for this would you like that the law of guardianship be so amended as to give power to parents to retain the guardianship of girls as against husbands up to 14 years?

A. Yes.

Q. You have got great experience of Punjab. Suppose Government passes this measure fixing the age of marriage, will there be any opposition in the Punjab?

A. Some people will object but the majority will welcome it.

Q. Supposing 16 is accepted as age of marriage, do you think there is any apprehension of the girls going wrong?

A. There is some apprehension.

Q. At present also girls are married at 17 or 18 but we do not hear of any cases going wrong?

A. They are married earlier but go to the husband at that age.

Q. Supposing marriage law is fixed at 15 or 16 but arrangement is made earlier, do you think that will be a safeguard?

A. Yes.

Mr. Yakub: Is it not a fact that infant mortality and maternal mortality during childbirth are mostly due in India to the employment of untrained and bad midwives?

A. I think mostly and also for want of knowledge to bring up children.

Q. And also it is due to unhygienic conditions of the houses and want of proper nourishment?

A. Yes.

Q. If girls are properly nourished, live in healthy surroundings, even a girl of 15, if she becomes a mother, she would remain all right?

A. Not so much as it would be in the case of a girl of 17 or 18.

Q. But the danger will be very much less if they are well educated and live in hygienic conditions?

A. There is still an extra risk from age.

Q. You have been mostly in the Punjab?

A. I have been entirely in the Punjab.

Q. At what age generally Muslim girls are married in the Punjab?

A. I think it is generally 16 or 17.

Q. Do you think that Musalman children in the Punjab are more healthy than the Hindu children?

A. If you exclude the lower classes, it is so.

Q. Do you think Muslim children are healthier and intellectually superior than Hindu children?

A. I think children suffer from women being shut up. I think Sikhs are better because they are in the open.

Q. So the children among the Musalmans in the Punjab as regards health and intellectual power are nearly the same as children of other communities?

A. I think the children of the Sikhs are much better. Tuberculosis among the Mohamedans is terrible on account of purdah.

Mr. Bhargava: Under ordinary conditions if Mohamedan children are physically better than Hindu children, has it any effect on intellect also?

A. I think intellect is affected by the general health.

Mr. Yakub: Is the rate of mortality among Muslim women less in the Punjab than among the other women during the period of their childbirth?

A. I think it is very bad. I think it is worse than among Hindus and Sikhs. Sikhs have more hygienic surrounding and much more open air.

Q. At what age Sikhs generally marry their girls in the Punjab?

A. I think about 17.

Q. And the Hindus?

A. I should say about 13 or 14.

Q. So probably you do not see any mothers at the age of 14 in the Punjab?

A. It is very infrequent.

Q. What is generally the age of mothers in the Punjab?

A. About 17 or 18.

Q. And even at this age you find that there is high rate of mortality among the children and also health of the mother suffers?

A. I think that is more due to bad hygienic conditions and want of knowledge. Much more should be done in educating the girls in schools.

Q. Is it really the frequency of pregnancy which tells upon the health of the mother?

A. That is also a factor. The others are the early age at which they begin married life, want of hygienic conditions and the want of care on the part of the mother.

Mr. Shah Nawaz: If girls of 13 years of age were to be consummated by their husbands don't you think there will be some injury to the girls?

A. There frequently is.

Q. And the injury would be such that it will probably injure her health?

A. Yes; frequently it does.

Q. Whether she has attained puberty or not?

A. Yes.

Q. Have you treated many cases of maternity of girl mothers between 13 and 16?

A. I have treated a good many cases.

Q. You think girl mothers of 14 have not got sufficient milk to feed the baby?

A. Yes.

Q. The baby suffers in health for want of food?

A. Yes and also because the mother is weak.

Oral Evidence of Maulana AHMED SAID SAHIB, Secretary, Jamit-ul-Ulema-i-Hind.

(Delhi, the 29th January 1929.)

Mr. Kadri: You are Secretary of Jamit-ul-Ulema-i-Hind?

A. Yes.

Q. And you have got diploma of completion of education?

A. Yes.

Q. You were a member of the deputation that was sent to Hajez from all the Mohamedans of India?

A. Yes.

Mr. Yakub: The present law of age of consummation is 13 but we have been told by doctors that it is not sufficient for consummation and girls when consummated at this age have been injured. Do you think this age should be raised?

A. No, I am not in favour of any law on this point. If you fix an age, it should be the age of attaining puberty.

Q. An age will have to be fixed. Some girls attain puberty at 11, some at 10 and some at 12. Puberty cannot be suitable for the purposes of legislation?

A. You will be going against the wishes of those girls who are developed before the age you fix.

Q. The object is the greatest good of the greatest number.

A. I think 13 is enough. With the spread of education the age is already advancing. Purda is being given up and girls are coming out.

Q. Do you think education of women is compulsory according to Mohamadan law?

A. Yes.

Q. If 13 is fixed for marriage a girl will not get enough time for education. She will only get 5 or 6 years.

A. I think that is enough for making her a good wife in every respect and make her understand her religion. If you want to make them judges that is different.

Q. Do you think a girl who will receive education for 5 or 6 years and who will observe purda and have no exercise will be fit for maternity at 18?

A. Then the remedy is that exercise should be made compulsory.

Q. The present age for extra-marital cases is 14. Do you think that a girl at that age can give an intelligent consent and can stand the temptations of money, etc.? Would you like that that age be increased to 18?

A. It should be increased as far as possible.

Q. You would agree to 18?

A. Yes.

Q. In Chapter 4th of the Quran the words 'balugal Nikah' used. What exactly is the meaning of those words?

A. Commentator Bezabi considers that those words mean that a guardian is entitled to protect the property of minor till she is capable of taking advantage of married life, i.e., when she has reached the age of puberty, and in the commentary he has given the age of puberty as 15 according to Abu Hanifa, and 18 according to his distinguished disciples.

Q. It may therefore be concluded from this that the age of majority according to Muslim law is 15 both for girls and boys?

A. Provided no signs of puberty appear before that age.

Q. If it is proved that a certain act will be prejudicial to the interests of Mohamedans and there is no specific injunction against that a Muslim King can, and in the absence of a Muslim King, the leaders of the community, can enact a law which would remedy the evil? Hazarat Umar, for instance, prevented people from purchasing lands in Mesopotamia and levied *zikat* on certain articles which were exempt during the time of the Prophet.

A. The Khalifs had a right to do or to prohibit a Mohamedan from doing certain acts about which there was no explicit injunction or order in the Islamic law. But a law fixing the age of marriage would be in contravention of the general permission which Mohamedans according to Muslim law have, as regards marriages. And this law will also work as a hardship. A suitable husband may be available at a particular time and the parents may think it to be in the interests of the girls to marry her with that bridegroom, the law will be an obstruction in the way if the fixed age is not reached. Then again the father may be very old and he may be anxious to marry the girl during his life time. In these cases the law will act as a hardship.

Q. Would you like to have exemptions provided in these hard cases and when it is in the interest of the girl to marry her at an earlier age?

A. I won't agree with that suggestion.

Q. The object of marriage according to Mohamedan law is the production of Aulad-i-salah. Don't you think a law should be enacted to remedy infantile mortality?

A. All this is due to want of education. Among the Mohamedans marriages already take place late. The law must be enacted for those communities where this bad custom exists.

Q. In Bengal in 60 per cent. cases consummation takes place before puberty. You will find that students in Bengal are very weak. Medical evidence is that girls are not fit for consummation and maternity till 16.

A. I would not object to legislation fixing the Age of Consent at 15, but if it is proved that no injury has been done to the girl by cohabitation before that age and that cohabitation has taken place at the desire of the girl, the accused should not be punished.

Mr. Shah Nawaz: In Bengal 80 per cent. of the girls are married before 11 or 12. Do you consider that that is an evil?

A. It is not.

Q. Don't you think the intention of Mohamedan law is that marriage should take place as far as possible after puberty and consent of the girl should be taken. What is the meaning of 'option of puberty'?

A. That is the intention.

Q. If there is a law whereby if a person wastes the property by misconduct or immorality, such alienation is rendered ineffectual, would you be in favour of it?

A. Such alienation is void from its very inception.

Q. In view of the fact that there is such a huge infant mortality would you not like to have a law of marriage?

A. By making the law of marriage you are circumscribing the freedom of action given to a Mohamedan by religion.

Q. Can you cite an example whereby a particular action has been interdicted from being circumscribed for the welfare of Mohamedans?

A. In 'Nural Imam' it is stated that a thing which is left uncircumscribed should remain without any restriction and a thing in which there is some restriction must be followed with that restriction?

Mr. Bhargava: You think this evil is due to want of education. Do you want that primary education should be made compulsory?

A. It should be, provided religious instruction is also given.

Q. Do you want that parents who do not send their children to school between 6 and 11 or do not get them educated at their homes should be punished?

A. Yes, but this should not interfere with religious education.

Q. Supposing the Government orders that between 6 and 11 Quran must be taught, would you approve of it?

A. Yes.

Q. Is there any injunction in Quran that between 6 and 11 education must be given?

A. No.

Q. Then it means that you are in favour of any restriction which is for the benefit of persons restrained provided it does not contravene any explicit injunction of the *shariat*?

A. Yes.

Q. This age of 15 you have suggested because of this rule?

A. 15 is already there, it does not interfere with religion.

Q. Those people who say that fixing the Age of Consent at 15 will be against *shariat* are wrong?

A. It is not against religion.

Q. Does that not apply to marriage also?

A. As there is no age fixed for marriages it is unnecessary to have legislation for restricting marriages.

Q. Do you think fixing the age of marriage would cause greater agitation than punishing a man for breach of the Age of Consent law?

A. Yes.

Q. How will you prevent consummation before 15 unless you fix the age of marriage at that figure?

A. There are hundreds of cases where marriage takes place but consummation is postponed for a number of years.

Q. Have you met any evil consequences as a result of early consummation?

A. No.

Written Statements of persons not orally examined.

Written Statement, dated the 6th August 1928, of Mr. SURAT SINGH, E.A.C., Delhi.

1—4. In my opinion the present law as to the age of consent is not at all satisfactory. The changes made in 1925 have not done any good at all.

Existing conditions in India demand that the age of consent in the case of unmarried girls should at least be 18 instead of 14 or 16 in clause (5), 375, Indian Penal Code.

In the exception to the same section the age should be 14 instead of 13.

I am also of opinion that instead of the words in the bracket in section 376, Indian Penal Code, another section 376A should be added and any husband who has sexual intercourse with his wife whose age is below sixteen should be punished.

My reasons for the proposed changes are as follows:—

It cannot be denied that we Indians have deteriorated in health and physique and the main cause of all this is early marriages and premature cohabitation.

It is a matter of daily experience that a large percentage of girls married at early age or subjected to premature cohabitation die of consumption. It is a crime to force motherhood at a premature age as it soon takes the life of poor girls whose guardians, blind to the dictates of custom, have hurled them to a life of premature cohabitation.

Cases of rape within and outside marital relations are as frequent as were before the amendment of 1925 in this part of the country.

I first take the case of married girls and wish to show why the amendment of 1925 failed to have any beneficial effect.

Child marriages are the root cause and so long as they continue sexual intercourses with child wives shall also continue.

So far as the records of Delhi Province show there never came a case of a married girl to the notice of authorities.

To me it appears absolutely impossible to detect such cases and also to prove them in Courts.

Pregnancy is the manifest sign of coabitation and where pregnancy occurs cases of rape can be easily detected, but where it is absent as is bound to be where there is no maturity, it is absolutely impossible to detect and bring to light such cases.

What will be the result of legal restrictions? People will freely resort to practices of abortion and this will become a much more serious menace to the society.

The only way to protection married girls is to control child marriages and unless this is done no amendments of sections 375 and 376, Indian Penal Code, can improve the conditions of married girls.

Coming to the question of young girls outside marital relations it is of course a painful sight to see young blooming girls plying the trade of prostitutes in disorderly houses as dancing girls or letting their bodies on hire privately and all this is done with the consent and compulsion of guardians for the sake of money.

Life of such girls is destined to be short. I should propose 18 years as the minimum limit of age of consent. Anything short of this will not protect girls between 16 and 18, because one or two years' difference in age cannot easily be detected. Generally there is no reliable record of birth in India and

much reliance has to be placed on the testimony of a medical officer and this kind of testimony is not free from defects and is not also infallible.

If the age of consent is made 18, it will then be possible to protect girls aged 16 generally and between 16 and 18 in rare cases.

The amendments of 1925 have neither succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes; nor protected married girls by postponing the consummation of marriage, by stimulating public opinion or by putting off marriage.

For protection of girls outside marital state age of consent should be raised to 18 and for girls inside marital state make into law Mr. Sarda's Child Restraint Bill and also raise the age of consent to 16 years.

5. Girls usually attain puberty in this part of the country at 14. There is not much difference in different castes, communities, etc.

6. Cohabitation is not uncommon before puberty, soon after puberty and before the girl completes 13 years.

Only cases of rape outside marital state come to Court and not of cohabitation with girls inside marital state.

7. There is no religious injunction of early consummation of marriage before or at puberty. Early marriages were unknown in India before the Mahomedan Rule.

8. "Gaona" or "Garbhadhan" as a usual ceremony is dead in this part of the country for 10 or 15 years. It was followed blindly without any principles.

9. I do not consider attainment of puberty as a sufficient indication of physical maturity to justify consummation of marriage.

I should fix the age of consummation at 16, two years after puberty. By that physical development will be enough to justify consummation without injury to health.

10. At the age of 16.

11. I have come across many cases of girls being used before puberty and after puberty before full physical development.

(a) I had tried a case at Gurgaon in 1923 or 1924 in which a Mahomedan aged 25 or so had married a girl of 9 or 10. She was not fit to satisfy him in the bed and use to pass urine. She was belaboured badly as the result of which she died.

Under the orders of the District Magistrate I had committed the husband to the Sessions Court for trial for the offence of murder and the Sessions Judge took a lenient view and convicted the man under Section 323, Indian Penal Code, for a year or two.

(b) Many kidnapped girls have appeared before me and from their appearance I found that they had had cohabitation before maturity and full physical development and this had made them pale, anæmic and physically decrepit.

(c) There was a girl of 13 or 14, sister of a prostitute, who was sent to an asylum on her request but afterwards she was taken away from there by a man and with him she died, after 6 months, of consummation, as the result of sexual excesses. Hundreds of such instances can be unearthed.

12. Yes.

13. The general public opinion in this part of the country is in favour of an extension of the age of consent.

14. Not at all.

15. Difficulties are innumerable. There should be a better method of recording birth entries—name of the person born should be invariably given along with the names of father and mother.

Among Hindus name is given after some time. There should be a law to report names when given and every other particular.

16. Certainly.

17. Yes. As regards the nature and amount of maximum punishment I would rest content with what has been proposed.

18. No.

19. I cannot think of any other safeguards.

20. Both should go together, otherwise neither will be effective.

In my opinion mere penal legislation fixing a higher age of consent for marital cases will not at all be effective without the restraint of child marriages.

Of the two alternatives, the latter would be more in consonance with the public opinion.

21. I would prefer to rely on the strengthening of penal law. Social reform, education and social propaganda have proved barren.

Written Statement, dated the 9th August 1928, of Mr. T. K. RAJA-GOPALAN (Officer on Special Duty, Finance Department, New Delhi).

1. There is no dissatisfaction as regards offences within the marital state; outside that state, it is left that the law may well be strengthened.

2. I enclose an extract from pages 528 to 530 of Vol. VI (1925) of the "Studies in the Psychology of Sex" by Havelock Ellis. The climate of India being far from temperate, it is felt that the age of consent within the marital state should not be further increased.

4. The amendment in question has not been effective in any of the three ways mentioned. It seems to be a mistake to proceed at all by legislations in a matter in which the primary requisite is sane education on matters connected with sex, personal hygiene and eugenics.

5. I can speak only in regard to the Hindus of Southern India. Brahmin girls usually attain puberty about the age of 12. Girls of other castes especially those leading an outdoor life appear to attain it about the age of 13.

6. Among the Hindus of Southern India I believe cohabitation (within the marital state) is fairly common soon after puberty and before the girl completes 13 years. None of these cases ever comes to court.

7. I have looked up the *Manu Smriti* as well as the *Grihya Sutras*. I find no text in either of these to support marriage, much less consummation of marriage before puberty. Among the Brahmins of Southern India, however, authorities later than the *Sutras* appear to enjoin marriage (not consummation) before puberty.

8. A ceremony called "Ruthusanthi" is performed in Southern India among the Brahmins. It is prescribed to be performed after puberty on the day of the consummation of marriage, the marriage itself taking place before puberty. The usual period is a year or two after puberty.

This "Ruthusanthi" is not apparently prescribed in any of the *Sutras*. On the contrary during the period of the *Sutras* the accepted custom appears to have been the performance of marriage after puberty. At all events the manthras and ritual laid down for the 4th day of marriage obviously prescribe cohabitation on that day. A reference is, in this connection, invited to Patalas 2 and 3 (especially Patala 3, Section 8 of the *Grihya Sutra* of Apastamba).

9. Please see the extract from Havelock Ellis mentioned in my answer to question 2 above.

10. Having regard to the climatic conditions of India, I would put the age in question at the 14th year, that is, after the girl completes 13 years of age.

11. I have not come across any such cases. If such cases actually come before the Committee, I would respectfully suggest that inquiries be made whether the injury in question was not due to the shock of the first coitus, quite apart from the age of the girl. Reference is, in this connection, invited to the discussions in pages 524 and 527 of the Volume of Havelock Ellis Studies cited above. Reference may also be usefully made to the discussions from pages 211 to 226 in Vol. III (2nd Edition—1925) of the same Studies "Sexual Impulse in Women," which envisage some dangers in delayed consummation.

12. I consider that consummation 2 years after puberty cannot in itself be attended with any evil consequences. Such results, if they occur, will probably be found to be due to conceptions being too frequent, to malnutrition especially during the period of gestation and lactation or the sexual intercourse during the period of pregnancy. What seems to be required is education in personal hygiene and eugenics.

13. Please see answer to question 2. Reform on the lines of Mr. Sarda's Bill would, however, appear to be welcome if the minimum age for marriage is fixed at 11 or 12 for girls and 17 for boys, especially having regard to social and climatic conditions in India. Consummation should, however, be allowed a year after puberty and the present law against offences within the marital state which is practically a dead-letter should be amended so as to prescribe only a fine as a maximum penalty for such offences. Reference may be made in this connection to Patāla 1, Section 3 of the Grihya Sutras of Apastamba which prescribes the avoidance of a bride whose age is too near that of the bridegroom. A perusal of the Manu Smṛiti will also show that a Brahmin boy must have his "Upanayanam", i.e., must enter into the period of studentship on the 8th year and that the minimum period of studentship has been fixed at 9 years after which the Bhramachari may, if he chooses, enter into the marital state. In other words, the earliest age of marriage for boys should be 17.

I venture definitely to recommend the continuance of the present practice in Southern India of marriage a few months or a year before puberty to be followed by a period of waiting for 2 or 3 years before consummation. Hindu ideals contemplate not merely a physical union, but a psychic and spiritual one under which the wife would be a fitting help-mate in the discharge of the Varma Asrama Dharma. Such a period of waiting before consummation would, it is believed, make for happier union after consummation, by the establishment of the requisite *rapport* before the actual physical union. It may be remembered that divorce as such is happily non-existent among Southern Indian Brahmins and higher class non-Brahmins.

14. No Brahmin mother in Southern India, to my knowledge, likes the consummation of her daughter's marriage to be postponed beyond 2 or 3 years after puberty. But the majority of them certainly desire postponement for at least a year after puberty. The question does not arise among the lower classes of Hindus in Southern India where marriage and consummation take place simultaneously some years after puberty.

17. Marital offences should be punished only with a fine.

20. Fixing the minimum age of marriage provided that the minimum is not greater than 12 (if possible 11) would be more in consonance with public opinion in Southern India.

21. The penal law should not be invoked at all within the marital state. Please see also the concluding portion of the enclosed extracts from Havelock Ellis.

Extracts from "Studies in the Psychology of Sex," Volume VI, by Havelock Ellis.

The extensive inquiries of Sandford Bell (*loc. cit.*) show that the emotions of sex-love may appear as early as the third year. It must also be remembered that, both physically and psychically, girls are more precocious, more

mature, than boys (see e.g., Havelock Ellis, *Man and Woman*, 4th edition, pp. 34, *et seq.*, 200, etc.). Thus, by the time she has reached the age of puberty a girl has had time to become an accomplished mistress of the minor arts of love. That the age of puberty is for girls the age of love seems to be widely recognised by the popular mind. Thus in a popular song of Bresse, a girl sings:—

“J’ai calculé mon âge,
J’ai quatorze à quinze ans.
Né suis-je pass dans l’âge
D’y avoir un amant?”

This matter of the sexual precocity of girls has an important bearing on the question of the “age of consent”, or the age at which it should be legal for a girl to consent to sexual intercourse. Until within the last twenty-five years there has been a tendency to set a very low age even as low as ten, as the age above which a man commits no offence in having sexual intercourse with a girl. In recent years there has been a tendency to run to the opposite and equally unfortunate extreme of raising it to a very late age. In England, by the Criminal Law Amendment Act of 1885, the age of consent was raised to sixteen (this clause of the bill being carried in the House of Commons by a majority of 108). This seems to be the reasonable age at which the limit should be set and *its extreme high limit in temperate climates*....It is the age recognized by the Italian Criminal Code, and in many other parts of the civilized world. Gladstone, however, was in favour of raising it to eighteen, and Howard, in discussing this question as regards the United States (*Matrimonial Institution*, Vol. III, pp. 195-203), thinks it ought everywhere to be raised to twenty-one, so coinciding with the age of legal majority at which a woman can enter into business or political relations. There has been, during recent years, a wide limit of variation in the legislation of the different American States on this point, the difference of the two limits being as much as eight years, and in some important States the act of intercourse with a girl under eighteen is declared to be “rape”, and punishable with imprisonment for life.

Such enactments as these, however, it must be recognized, are arbitrary, artificial, and unnatural. They do not rest on a sound biological basis, and cannot be enforced by the common sense of the community. There is no proper analogy between the age of legal majority which is fixed, approximately, with reference to the ability to comprehend abstract matters of intelligence, and the age of sexual maturity which occurs much earlier, both physically and psychically, and is determined in women by a very precise biological event: the completion of puberty in the onset of menstruation. Among peoples living under natural conditions in all parts of the world it is recognized that a girl becomes sexually a woman at puberty; at that epoch she receives her initiation into adult life and becomes a wife and a mother. To declare that the act of intercourse with a woman who, by the natural instinct of mankind generally, is regarded as old enough for all the duties of womanhood, is a criminal act of rape, punishable by imprisonment for life, can only be considered an abuse of language, and, what is worse an abuse of law, even if we leave all psychological and moral considerations out of the question, for it deprives the conception of rape of all that renders it naturally and properly revolting.

The sound view in the question is clearly the view that it is the girl's puberty which constitutes the criterion of the man's criminality in sexually approaching her. In the temperate regions of Europe and North America, the average age of the appearance of menstruation, the critical moment in the establishment of complete puberty, is fifteen (see e.g., Havelock Ellis, *Man and Woman*, Chapter XI; the facts are set forth at length in Kisch's *Sexual Life of Woman*, 1909). Therefore, it is reasonable that the act of an adult man in having sexual connection with a girl under sixteen, with or without her consent, should properly be a criminal act, severely punishable. In those

lands where the average age of puberty is higher or lower, the age of consent should be raised or lowered accordingly. Bruno Meyer, arguing against any attempt to raise the age of consent above sixteen, considers that the proper age of consent is generally fourteen, for, as he rightly insists, the line of division is between the ripe and the unripe personality, and while the latter should be strictly preserved from the sphere of sexuality, only voluntary, not compulsory, influence should be brought to bear on the former. (*Sexual-problem*, Ap., 1909.)

If we take into our view the wider considerations of psychology, mortality, and law, we shall find ample justification for this point of view. We have to remember that a girl, during all the years of ordinary school life, is always more advanced, both physically and psychically, than a boy of the same age, and we have to recognize that this precocity covers her sexual development; for even though it is true, on the average, that active sexual desire is not usually aroused in women until a somewhat later age, there is also truth in the observation of Mr. Thomas Hardy (*New Review*, June 1894): "It has never struck me that the spider is invariably male and the fly invariably female." Even, therefore, when sexual intercourse takes place between a girl and a youth somewhat older than herself, she is likely to be the more mature, the more self-possessed, and the more responsible of the two, and often the one who has taken the more active part in initiating the act. (This point has been discussed in "The Sexual Impulse in Women" in Vol. III of these Studies.) It must also be remembered that when a girl has once reached the age of puberty, and put on all the manner and habits as well as the physical development of a woman, it is no longer possible for a man always to estimate her age. It is easy to see that a girl has not yet reached the age of puberty; it is impossible to tell whether a mature woman is under or over eighteen; it is therefore, to say the least, unjust to make her male partner's fate for life depend on the recognition of a distinction which has no basis in nature. Such considerations are, indeed, so obvious that there is no chance of carrying out thoroughly in practice the doctrine that a man should be imprisoned for life for having intercourse with a girl who is over the age of sixteen. It is better, from the legal point of view, to cast the net less widely and to be quite sure that it is adapted to catch the real and conscious offender, who may be punished without offending the common sense of the community. (Cf. Bloch, *The Sexual Life of Our Time*, Ch. XXIV; he considers that the "age of consent" should begin with the completion of the sixteenth year.)

It may be necessary to add that the establishment of the "age of consent" on this basis by no means implies that intercourse with girls but little over sixteen should be encouraged, or even socially and morally tolerated. Here however, we are not in the sphere of law. It is the natural tendency of the well-born and well-natured girl under civilized conditions to hold herself in reserve, and the pressure whereby that tendency is maintained and furthered must be supplied by the whole of her environment, primarily, by the intelligent reflection of the girl herself when she has reached the age of adolescence. To foster in a young woman who has long passed the epoch of puberty the notion that she has no responsibility in the guardianship of her own body and soul is out of harmony with modern feeling, as well as unfavourable to the training of women for the world. The States which have been induced to adopt the high limit of the age of consent have, indeed, thereby made an abject confession of their inability to maintain a decent moral level by more legitimate means; they may profitably serve as a warning rather than as an example.

Written Statement, dated the 10th August 1928, of Mr. SEWA SINGH, Senior Subordinate Judge, Delhi.

1. No expression of dissatisfaction with the present state of law, is given by any public body or men. Among educated classes the early marriages or their early consummations are becoming very rare. They, therefore, can

regulate the question of consent according to their own views. Among illiterate and the backward people early marriages are yet common. They are almost ignorant of law regarding the age of consent. Cases of consummation of marriages which contravene the law, are seldom brought to the notice of courts as the persons who are to take action in such matters are themselves ignorant of law. The persons of this type, therefore, never cared to know the existing law and to agitate for its modification. In my opinion there is no tangible expression of dissatisfaction with the present law.

2. On account of the climatic conditions of the country, women feel the urge of their sex early, say, at about the age of 13, but the physical development is hardly complete or sufficient at that age justifying the consummation of marriage. The result of early consummation of marriages seriously affects their health and the children of such couples are seldom healthy. Very often they die prematurely. After the birth of one or two children in early age woman grows weak. The rate of mortality in women is much greater than in men. The labour which should be a natural event in female life is very often a source of severe trouble and sometimes of death. This is mainly due to early cohabitation. The raising of the age of consent within marital state is therefore advisable. It is also advisable to raise it in case of unmarried girls. Though they develop signs of puberty after 13 years of age and are very often induced to give consent to sexual intercourse without understanding the consequences, the results of seduction are very often disastrous for the girl and her parental family. A girl seduced before her marriage almost loses all claims to social honours which are privileges of duly married ones. On account of the spread of education among the females and the gradual disappearance of the purdah the occasions for contact of girls with boys are increasing. The chances of the girls yielding to the inducements of immoral men are increasing. The raising of the age of consent would have a salutary effect in checking immoral advances. The present law is therefore not enough to safeguard the females against such overtures.

3. I have got experience of the Punjab especially of central districts and Delhi. In these parts of the country especially among the agricultural classes crimes of seduction and rape are very frequent. The standard of education of the zamindar classes is yet very low. The moral sense is not very high. The number of females is less as compared with males. Though wife is necessary complement for a zamindar for helping him in his pursuit of agriculture, it is not generally the lot of every zamindar boy to get married. Unmarried youths therefore very often seduce women for immoral purposes or ultimately for marriage. I am unable to say what has been the effect of the last amendment of law in reducing or preventing the crime. I am unable to suggest any measures to make the law effective. The present law is quite enough. The spread of education would increase its effectiveness.

4. The result of raising the age of consent to 13 years within the marital state has been effective to some extent in protecting married girls against cohabitation with husbands within the prescribed age-limit. In most cases I should think the consummation of marriages was possibly deferred but it had no effect in putting off marriages beyond 13, nor could it be said to have stimulated public opinion in that direction. If the offences of rape in marital state were made cognisable, the law would become very effective but that would not be appreciated by the public as there was great danger of the police abusing their power. We, therefore, must trust in the growing sense of the people, and social progress for effectiveness of the law rather than in the stringency of it.

5. The girls usually attain puberty between the age of 14 and 15. Development in well off agricultural communities or among those communities who lead rough outdoor life and generally live in villages is early. The rate of development is not so high among mercantile and other communities who live in cities. Among meat-eating communities also the development is a bit early as compared to those who abstain from taking meat.

6. Cohabitation among agricultural and other classes living in villages soon after puberty is very common but not so general before puberty. In

very rare cases before the girl completes 13 years in age, cohabitation might take place especially among depressed classes.

Very seldom such cases come to court. In my experience of 11 years' public service I heard only one or two cases of early cohabitation brought to courts.

7. I cannot attribute the practice of early consummation of marriage before or at puberty to religious injunctions. It is more or less depending upon the state of society rather than to any religious belief. If any religious injunction be there it is generally unknown and uncared for, as the society imposes no penalty for its breach.

8. Gaona ceremony is usually performed without any regard for puberty. In some cases the ceremony is merely nominal, and sometimes it follows soon after the marriage. The Tiroja ceremony or 3rd visit of the wife to the house of her parents-in-law is generally made after puberty. In this visit cohabitation practically takes place. This ceremony is generally made between 15 and 16 years of age.

9. Mere attainment of puberty is not sufficient indication of physical maturity to justify consummation of marriage. In my opinion it should never take place before 15 years of age. I would even suggest that proper period for consummation is after 18 from medical point of view, but the present state of society with its notions of morality and chastity does not favour the retention of girls in their parents' homes after attainment of puberty.

10. Owing to the want of education girls do not develop intelligence in proportion to that of their physique, very often they fail to realise the consequences of consent before the age of 16. In my opinion a girl can give intelligent consent only when she is above 16.

11. I am unable to quote any definite instance with accuracy as regards age.

12. Early consummation and early maternity are responsible to a great extent for high maternal or infantile mortality.

13. I have already replied that there is no tangible sign of any further development of public opinion in favour of extension of the age of consent in marital or extra-marital cases but among educated classes there is a growing sense in favour of extension.

14. Women generally are in favour of early consummation of marriage for their children, as they probably feel the weakness of their sex and wish to minimise the chances of any mishap which might befall to the girl on account of her mental aberration in yielding to passion.

15. The recording of birth is quite common in the country. The evidence from Government record as coupled with the medical evidence is generally sufficient for determining the age of girls in connection with offences under sections 375 and 376, Indian Penal Code. The difficulty would be minimised if the name of a child is also recorded at the time of making the birth entries. This is being done in some municipalities even now.

16. It is difficult to determine the age of a girl between 12 and 13, but it is easy to distinguish a girl of 12 from that of 14 or above. The margin of errors would be materially reduced if the age of consent be raised to 14 or above.

17. There should be distinction between marital and extra-marital offences. The punishment prescribed by the present law is quite adequate.

18. The present procedure is quite suitable.

19. The present safeguards are enough. Only they require proper working.

20. Legislation for fixing the minimum age for marriage would really be much more effective in preventing early consummation than the raising of the age of consent. In some cases there may be some feeling against the abolition of early marriages, but in my opinion that feeling needed no legislative respect as it was based more on ignorance than on any religious injunction.

21. I am not in favour of strengthening the penal law to secure the end in view, as in most cases the penal law is liable to be abused by misguided persons. We should depend on progress of social reform by means of education and social propaganda for making the law effective.

Written Statement, dated the 14th August 1928, of Lt.-Col. C. H. REIMHOLD, I.M.S., Chief Medical Officer, Delhi.

5. Usually about 12 years.

7. Yes, said to be religious by the uneducated who, however, cannot quote any authority.

8. Yes, coincides with consummation of marriage and performed generally (but not always) before attainment of puberty.

11. Injury to genital canal, either a recto-vaginal fistula or a complete tear of perineum—Have seen two cases this year of such injuries—age in each case was about 11 years.

12. Yes.

13. Yes. Confined chiefly to educated women.

14. Yes.

20. Legislation fixing minimum age of marriage is likely to be more effective. This was the consensus of opinion at a meeting of the Delhi Women's League held on August 6th, 1928.

21. By process of social reform and education.

N.B.—I consulted a female doctor (Dr. H. L. Keane, W. M. S.) on the subject.

Written Statement, dated the 24th August 1928, of Lala RADHA MOHAN, Rals, The Chowk, Delhi.

1. Since people in general are better educated now and have become to realise that intercourse under any circumstances with a girl under fourteen is undesirable, I feel inclined to be dissatisfied in the following points in these two sections:—

(a) Under "Fifthly" as per Sir Hari Singh Gour's Bill, the word "Sixteen" should be retained.

(b) Under "Exception", the word "Thirteen" may be changed to "Fourteen".

(c) In Section 376, fourth line, the word "Twelve" may be changed to "Fourteen".

2. From medical point of view, any age under fourteen is undesirable for any class of people or people of any Province; for, the proper growth of organs is not completed before that age and that it matures only at the age of 16. Secondly, All-India Women's League and one or two Provincial Women's Leagues resolved vigorously that the age of consent should be raised. Considering these two most important points, I would suggest that an advance on the present law should be made in the near future.

3. There seems to be no appreciable difference in seduction or rape cases before or after the amendment of the law made in 1925. It was due to the fact that the change in the law was not sufficiently promulgated among the masses. Big posters should be stuck against the walls of all towns and villages in suitable languages. Municipal Commissioners in cities and towns—Patwaries, Chaudharies and Lambardars in villages, and Government Executive Officers who come in direct contact with the public, should co-operate to see that this evil is eradicated. As far as possible, Policemen and

Tehsil Chowkidars should be responsible and educated men, for they take the law into their own hands sometimes. If they commit an offence like this, they should be severely handled with. We read in papers every day such malpractices committed on young girls all over the country; generally such criminals escape from the clutches of the law by some hook or crook.

In fine, I would suggest that—

- (a) The Government should see that the law has its proper course and that repressive measures are adopted.
- (b) That Societies for the social uplift of the country should try their best to root out this evil by all possible means (say, lectures, free cinema shows and free pamphlets), etc.
- (c) That all marriages should be registered in a "Register of Marriages" kept by the Municipal Committee and correct ages of the couple recorded, just as a register of births and deaths is faithfully kept by it.
- (d) That the maidenhead ceremony prevalent among prostitutes should also be recorded in the same register of marriages for the purposes of age of consent. There should be no interference of police at all in such matters.

Crimes of seduction or rape are generally frequent in menial and labour classes among themselves, or unprotected womenfolk of Hindus by other classes. Whenever such person or secret organised bodies are brought to light, law must have its full course.

4. The amendment of 1925 is on its way to bear fruit by all the 3 possible means referred to in this question. Here, I propose again for the keeping of a register of marriages by the Municipalities where the correct age can be referred to the register of births as well. This will certainly have its effect, for parents will hesitate to give out wrong ages.

5. The girls attain puberty at the age of 15 in general in Delhi.

6. Puberty or no puberty—cohabitation begins just after "Gaona" is over in legal marriages. In all other cases cohabitation does take place, but a very high percentage of them do not come to court for fear of further social evils lest the girl may not find a suitor.

7. The early consummation of marriage is not due to any religious injunction. It is only due to social customs. Sometimes the parents want to see their children married earlier just to put off a burden from their shoulders. Hindus believe in *Vedas* which authorise the ages of 16 and 24 for a girl and a boy respectively for marriages; but this injunction is followed by very few people.

8. "Gaona" is performed in the Province of Delhi and it has its good effect, for in the case of 60 per cent. parents, it is seen that this ceremony takes place at the attainment of the age of puberty.

9. No, sixteen years old or 2 or 3 years after the age of puberty will quite justify the consummation of marriage.

10. At the age of 16 years.

11. Yes. I know of several such cases. In some cases there was abortion or miscarriage and a very narrow escape from death at the age of 14 or 15. In other cases sickly progeny is always under the treatment of doctors, and results in death in many cases in infancy.

12. Early consummation and early maternity are undoubtedly responsible for high maternal and infantile mortality. Besides too much cohabitation has its bad effect, both physically and intellectually. In the case of young men of 20 it will be evident from their sunken eyes, hollow cheeks and bad memory, one year after the marriage is over. In the cases of young women, a crop of women diseases.

13. All-India Women League and Delhi Women League were held in Delhi and passed resolutions to the effect. The resolutions had had their educative

value, both in Hindu and Mohammedan ladies, educated, rich and middle, classes.

14. In most cases they do.

15. (b) The age of girls can be easily determined by referring to the birth register of the place where the girl was born. Doctor's evidence is always approximate.

16. That depends upon the ideas and customs of the parents where the girl is born, but these ideas could be minimised or reduced when the parents will be thoroughly educated of the evils of lower age of consent.

19. The safeguards, already existing, quite suffice, if they are properly adhered to.

20. Penal legislation fixing the minimum age of marriage will be more effective, for it can eliminate the question of age of consent.

21. Neither the strengthening of the Penal Law alone, nor the progress of social reforms alone, can fully secure the object in view. They must go hand in hand to achieve the real object.

Written Statement, dated the 27th August 1928, of Mr. P. C. MUKHERJI, 11, Clive Road, New Delhi.

1. No; except amongst a few enthusiastic social reformers.

2. (1—2) The present law of the age of consent is difficult to enforce, more especially in cases of marital offences. I would, therefore, alter the law in cases of marital offences and change the barbarous punishment to (a) correction in reformatory schools, (b) separation, (c) deportation and (d) bonds for good behaviour, etc., as thought proper in different cases.

I feel inclined to believe that the legislators did not mean to enforce the law in cases of illicit married intercourse. Perhaps their intention was to create public opinion against this sort of cruelty to child-wives even in educated families of high social standing and I rejoice to opine on the strength of my knowledge of actual facts that they have succeeded in some measure in attaining their object without recourse to criminal proceedings against husbands leading to most undesirable consequences to the poor wife for whose benefit the law is supposed to be enacted.

If advance on the present law means more vindictive spirit in raising the Age of Consent in marital offences and in severer punishments I am not for further advance.

Economic causes and higher culture and more healthy public opinion have also contributed to the same end, namely, raising the marriageable age of girls in all societies. The desired change is likely to come from within and I would do anything to influence or even force public opinion in towns as well as villages. The lethargy of ages is disappearing and I believe that patriotic Indians will surely pay more attention to our social shortcomings.

3. No, as far as I know, but there must be a few cases here and there. More time is necessary for a finding based on knowledge of facts which no decent family would like to leak out. Cases of rape outside marital state are also apt to be concealed by well-wishers of the girl on account of absurd social ideas of inequality between the sexes in this respect. The girl is likely to lose her social status more or less by exposure.

I would give more publicity to the law as it is, without violating the rules of decency. I would organise branches of social reform associations all over the country. In villages where night schools for adults exist I would use them for this purpose.

4. Too early to opine on knowledge of facts. I would answer (1) and (2) in the affirmative with a sense of certainty and for (3) I would say

doubtful and give more time for this consummation even in the case of certain communities which are the worst offenders in the matter of minimum age of marriage.

To make it more effective I would adopt measures of publicity and propaganda and inflict punishments enumerated in my answer to query 17.

5. 11 to 13 years depending on the health of and nature of food given to the girl irrespective of caste or community.

Rarely after 13 in cases of weak and unhealthy girls.

6. (1) No.

(2) Usual, as Garbhadhan ceremony is performed immediately after puberty. In a few cultured families this ceremony is not performed at all. It is called second marriage in Bengal.

Where there is puberty just before marriage or during marriage festivity days the fact is concealed with scrupulous care and the ceremony is performed after a few months only. There are now lots of marriages after puberty which are not concealed and gradually the ceremony is losing its hold on the community. Obviously raising the age of honeymoon beyond 13 is reasonably expected amongst all educated classes.

(3) Quite common.

No.

7. Certainly in most cases. The idea is not to miss the earliest opportunity of begetting a son—the authority is Manu or some such law-giver—I am not certain. The penalty is hell for ancestors. The earthly penalty is the lowering of the family in the estimation of the public until an influential family breaks the rule making it easy for others to follow the example. Besides, parents do not like to take the risk of seduction of their daughters by depraved relatives or neighbours.

8. Yes; but the educated classes do not observe it now-a-days. It coincides with consummation of marriage. Immediately after attainment of puberty if husband is available and responds to the invitation.

9. This depends on the health and development of the girls. Hundreds of healthy men of vigorous body and mind are issues of girls of 12 to 14.

10. In India the parents or guardians marry the girls to proper husbands. So there is no question of realization of consequences as far as girls are concerned. A girl never decides the time of consummation. She simply obeys the parents or guardians.

11. No.

12. To a certain extent only. Other causes hygienic and economical contribute more towards infantile mortality. Insanitary dwelling houses and bad food contribute more towards deterioration of the Indian race intellectually and physically than early consummation and early maternity except in cases of unhealthy and undeveloped girls.

13. None whatever as far as the general public are concerned. Certain classes of social extremists exist no doubt, but their number is insignificant.

14. They want a golden middle, 12 to 14 for girls and above 18 for boys.

15. Yes; birth registration ought to be strictly enforced and originals kept in District Boards and Municipalities.

16. No.

17. Certainly. For marital offences I would in the first instance take a bond from guardians that they would separate the pair up to the time of legal Age of Consent. Where that is not possible, that is the separation, I would send the husband to some reformatory school at a distance or failing that I would deport him to a distant but healthy place to live under observation of the police, his expenses being met by a fine on the guardians if rich or I would make the husband earn his own livelihood, the Magistrate or Court of Sessions deciding which course is most suitable.

For extra-marital offences I would allow the law to stand as it is at least for 10 years.

18. As to procedure of trials in the case of marital offences any person may give information, but I would not allow the police to make enquiries except under the direction of a first class or district magistrate.

I would not interfere with the procedure as it exists at present in cases of extra-marital offences.

19. I would leave this to competent lawyers who are likely to sympathise with the offenders or their guardians as I believe that firmness in exposing the culprits and mercy in dealing with them will ultimately produce the desired result.

Any vindictive or barbarous punishment or measures of procedure should not be adopted against marital offences.

20. No. I am inclined to believe that public opinion enlightened or otherwise would support legislation fixing a minimum age of legal marriage under proper safeguards and after thorough propaganda work and publicity.

To begin with I would insist on registration of all marriages at once giving correct age and condition of guardians of bride and bridegroom. When this has been done satisfactorily in the opinion of the public, the authorities concerned, I would make a draft enactment fixing a minimum age of legal marriage and circulate the same in all languages understood in India and among all sorts of people.

A minimum legal marriage committee will record public opinion in all its aspects. After at least five years' strenuous work by a sympathetic committee it will be easy to pass the law without any real grievance.

These are days of persistent effort on rational lines and as there is a general awakening in the country, I see no reason why social reformers and educationists would not take up the matter.

21. Certainly not; as I believe in progressive measures and gradual evolution of a higher state of society, better from within, and in view of the vastly different grades of culture covered under the same statutory law, I cannot recommend drastic legislation sanctioning barbarous punishment in marital offences. I would on the other hand rely on education and social propaganda to fight out the devil by continuous onslaught from all angles.

In conclusion I most humbly beg to opine that the true remedy is legislation fixing a minimum legal age of marriage with the support of all public bodies of sufficient standing.

Written Statement, dated the 29th August 1928, of Dr. MOOL SINGH BAZAZ, M.B., B.S., Egerton Road, Delhi.

1. Yes, a certain amount of feeling exists among educated classes that the age of consent in the existing law is too low.

2. (1) None.

(2) Spreading of education in the females and the handicap from which the young girls suffer on account of early marriage and pregnancy cutting short even their School Education, the baneful effect of early marriage on the growth and development of young girls, stunted growth and poor physique of children born of immature parents, danger to life of young mother at the time of parturition on account of ill-developed body, dangers to which young girls are exposed on account of increasing freedom of movements, their employment in factories and business houses—all these facts demand a substantial advance in the present law regarding Age of Consent.

3. No. I do not know.

4. I do not know.

5. The average age of attainment of puberty is about 14 years. It may be accelerated in girls of well-to-do families and retarded in those of poor parents.

6. (a-c) No.

7. I attribute the practice of early marriage which is fast disappearing among the Punjabis generally and has nearly disappeared among the Sikhs, more to practice of last few generation than any religious injunction. In my opinion the practice was due to the comparative immunity of married girls from molestation and forcible abduction which was practised by Afghan invaders and others during the latter part of Moghal Rule, as compared to unmarried grown up girls. My religion does not give any such injunction and the practice in my community is more towards marriage after 16 years. There is a belief among the very orthodox and illiterate Hindus that the consummation of marriage should take place before signs of puberty are manifest, but even in those cases the practice of very late Muklawa (or Gaona) nullifies the evil effect of an early marriage.

8. Gaona or Muklawa ceremony is still performed in almost all cases of early marriage and usually takes place well after the puberty. Garbhadhan is unknown in my part of the country.

9. No. Age of puberty may be anything from 11 or 12 up to 15 or 16, but physical maturity before 18 years of age is very rare and is found only among the well-to-do people, but even there it is seldom before 16 or 17 years. I think if physical maturity has to be considered as a criterion for determining the marriageable age (as it should be), it should not be less than 18 years, because development, which generally continues even after 18, is suddenly checked by an early pregnancy, the growth is thereby retarded and children born of such mothers are seldom well-developed. This has got a direct bearing on the stamina and physique of the people. Those classes which perform their marriage ceremony late have better stamina than those among whom early marriage is still prevalent.

10. Not before 18 years.

11. I cannot cite any definite examples of physical injury to the girl as a result of cohabitation before puberty because of the tendency of the people to conceal such cases or resorting to female practitioners for consultation, but I can give scores of examples of cases that I see almost daily in my practice where the ill-health can be traced to early marriage and cohabitation. As to the poor health of their progeny there are hundreds of examples of puny little babes weighing 4 or 5 lbs. at birth where no other disease was discoverable except this cause of early maternity.

12. Yes, I do. There are other causes also of deterioration of the health of people as a whole such as bad housing, congestion and unhygienic surroundings, bad food and poverty, but early maternity is certainly responsible for its lion's share in keeping up diseases such as Osteomalacia, Rickets, and Tuberculosis and keeping the infant mortality at such a high figure.

13. As I have already said the practice among my community is for marriage above 16 as far as possible, below 16 being exceptions. The general tendency also among all classes in the Punjab is to delay the marriage till the girls are better developed than they used to be some years ago and as time passes on and more and more girls are being sent to school, the completion of their education up to the high-school standard will supply a further incentive to delay the marriage.

14. No. The older women who are grandmothers may be crying "Let me see my grandchild married before I die", but the tendency among the women of present generation is to see their children grow up before they marry.

15. I have got no personal experience of this.

16. From theoretical knowledge I can say that the margin of error will certainly be reduced if the age of consent is made 18 years.

17. Yes, I think it better to have the distinction between marital and extra-marital offences. I would recommend the punishment proposed in the new Bill.

18. I have got nothing to say on this point.

19. None.

20. I think the fixing of minimum age of marriage is more likely to be effective because there is always a likelihood of concealment of the offence committed in the marital state, but there is no possibility of concealment of a marriage. I think the public opinion is crystallising in favour of fixing the minimum age of marriage.

21. I think both are interdependent; the one without the other is useless. As the education and social reform are progressing, a little progress in law is also necessary to keep an element of fear as an auxiliary to educative propaganda.

Written Statement, dated the 29th August 1928, of Rai Sahib Lala RATAN LAL, M.A. (Science), Head Master, Government High School, Delhi, and Assistant Superintendent of Education, Delhi.

1. There is no dissatisfaction.

2. As far as the marital conditions are concerned I would be strongly opposed to raising the age of consent from 13 to 14. The present age was only fixed in 1925 after a very thorough discussion in the two houses of legislature and the Government was quite right at that time in putting down its foot against a 14-year limit. Conditions have not changed since then. Marital vow is sacred and a sacrament and an interference with a married couple must be avoided as far as possible. The improvement in this matter should come from within and not through criminal legislation. There is little doubt that public opinion is steadily and, I should say, fairly rapidly developing. Even the orthodox men and women have commenced realising the injurious results of early consummation. The difference between 13 and 14, though only of one year, is vital to the problem under consideration. 13th year is that in which a girl usually attains puberty and the natural forces then released, particularly if the girl is a married one, make her quite a different person in the 14th year while the husband who might be, say, usually 17 or 18, also feels the new forces asserting themselves. The consummation in that year (14th) should not be a criminal offence. Some sort of restraint is usually exercisable by parents on the young couple coming together and we should depend on the good sense of the parents which as I have said is developing steadily. If marriage itself before 14 is made punishable the matter almost drops automatically in a way.

Raising the age from 13 to 14 may be fraught with serious risks, since the section might be used by unscrupulous and mischievous people to harass and scandalise decent persons and as a means of extorting blackmail and venting personal animosity and grudge.

As regards extra-marital conditions I am not quite definite. At most raising the age of consent to 15 may be desirable, but certainly not to 16.

3. I have little personal knowledge.

4. The general public knows little about the law which as far as I know remains a dead letter.

5. 12 and 13 year. Medical men would know better.

6. (1) Rare.

(2) Yes. Fairly common.

(3) Rare.

I haven't heard of any cases going to Court.

7. I haven't heard of religious injunctions enjoining consummation of marriage before puberty, but among Hindus generally, religious texts are frequently quoted enjoining celebration of marriage ceremony before menstrual period commences.

8. Yes, it usually coincides with consummation and is generally after attaining puberty.

9. Consummation soon after puberty and before full development would not be desirable, but should not be made a criminal offence under marital conditions.

10. Conditions differ very widely in different classes and communities, but with the attainment of puberty the natural forces must enable her to give an intelligent consent or refusal.

11. Have no professional experience, but consummation before puberty must be injurious.

12. The high maternal and infantile mortality can be only partly due to early consummation and maternity. There must be other strong and potent causes, climatic, racial, ancestral, economic, social, educational and administrative, which are responsible for the very high mortality all round, not only infantile. The total death rate in India being 3 times that in England, infantile mortality must be correspondingly greater. In order to account for this general mortality the very high birth rate of the country amounting to about 40 per mille must be taken into account. The problem of high mortality, particularly infantile, is inseparably linked with the high birth rate. The problem needs very elaborate scientific investigation by experts on eugenics associated with sociologists, economists, politicians and medical men. The fact that in spite of undeniable and appreciable rise in the age of marriage, brought about by social and educational propaganda, during the last 30 or 40 years, no perceptible effect has been produced on general death rate or infantile mortality, clearly indicates that early consummation and maternity cannot be held entirely or primarily responsible for the mortality. Age of puberty and maturity must also vary in different countries with average age which is in reciprocal relation to death rate. Low average age (India) must indicate earlier maturity and high average age (of England) must postpone puberty.

13. No.

14. Not noticeably.

15. I have no experience of this. In fact as far as I know hardly any prosecutions under the Age of Consent section take place.

16. I do not favour a change.

17. It would be desirable to undertake legislation for the separation of marital and extra-marital offences. To include a marital offence under the section of rape is revolting to Indian sentiment. In that case the maximum punishment for the marital offence should be 3 months' simple imprisonment or fine. The very high punishment now prescribed may be partially responsible for the age of consent section remaining a dead letter. For the extra-marital offence the present punishment should remain.

18. There would naturally be some difference if my suggestion at 17 is accepted.

19. Can't suggest any.

20. I am opposed to both kinds of measures suggested in the question. The public opinion on the subject, wherever it exists, is confined to a very limited number of people "with advanced ideas" who in these matters are often inclined to ignore the conditions and circumstances of the masses. Social and educational propaganda is the only proper remedy and it is having marked influence.

21. As already replied under No. 20, on progress of social reform and not on penal laws.

Written Statement, dated the 29th August 1928, of Mr. MAHABIR PRASAD, Advocate, Joint Secretary, Jain Mitta Mandal, Delhi.

We are in receipt of your letter dated 27th July 1928, and in compliance therewith here are the detailed answers to the questionnaire prepared by your committee.

The answers have been considered by the body, and there is a general consensus about the principles on which they are based. This body, consisting of more than 300 members, is strongly against any measure which proposes to regulate, or interfere with the relations of a married couple. Our view is that the raising of the consent age in marital cases by force of penal law won't do much good—though it may do harm. Of course it will welcome legislation fixing the minimum age of marriage. Besides, legislation like one of Sarda's Bill will make such a measure as proposed quite unnecessary.

As regards oral examination, if you think necessary you can send for the President of this Subha for the elucidation of any point.

1. No. In fact, not many persons know the existing state of law as to the age of consent.

2. (a) So far as raising the age of consent of married girls is concerned, in our view public opinion does not warrant any advance on the present law. The existing law about the age of consent between a married couple has not grown obsolete, exigencies of the time having not gone beyond it. It is sufficient to meet the present requirements of affairs and should be retained. Our reasons being the following:—

- (i) There is not much difference between 13 and 14 years neither in physical fitness nor in mental equipment. Instances are there where some girls of 13 are more developed than others of 14. It is the physical development rather than the age that is to be regarded. We shall have to leave it after all to the good sense of the parents of the couple to look to the physical fitness of the children before allowing them a chance to cohabit. A statute and its forcible bringing into action in this concern may simply breed mischief.
- (ii) Outside interference should be allowed to have as little to do with the relations of the married couple as possible. Else it may mean giving chances to enemies, bad-meaning neighbours and unscrupulous policemen to disturb the sanctity and peace of the home.
- (iii) After raising in general the marriageable age by legislation, there should not be left much necessity of this raising of the consent age beside.
- (iv) There do not seem any adequate arrangements whereby such statute may be properly enforced in practice. Police is always defective, and too impious an agent to be given authority in such matters. Public vigilance is neither so alert nor so convinced.
- (v) Sentencing away the husband to jails for such quite human faults may only mean, in majority of cases, taking away the only shelter and protection the girl-wife has. Thus the law may only serve to defeat its own purpose.
- (vi) No sudden change is effected in the constitution of girls, just on the completion of the 365th day of the 14th year, that may forthwith reveal to the medical man the exact age of the girl. Thus it may breed bribery to procure concocted witness and false affidavits.
- (vii) In fact, any law fixing the age of consent in case of married girls is quite unnecessary, genuine cases remain concealed, while enemies will take undue advantage of troubling the husband

and their guardians by unscrupulously reporting cases. As yet such cases did not come to court, the age fixed having been 12 upto 1925, and but increasing the age to 14, will increase chances for such mischiefs.

(b) The raising of age in case of unmarried girls is surely necessary for the following reasons:—

- (i) It would have altogether a salutary effect.
- (ii) It would tend to decrease crimes of seduction and rape.
- (iii) It would help to decrease the number of prostitutes. Note should be taken to make special provisions in case of prostitutes. It should be made punishable for a girl below the age of 16 to offer herself for prostitution. It does not always look possible for a man addicted to such evil habits to judge the age of the girl, who is there offering herself to him, from her very face. It should be pity that in such cases the dupe is convicted and the girl let free. It would be still better if legislation is made allowing only such prostitutes by their trade as have obtained license, and no license to be given to girls below the age of 16.

3. Number of rape cases are very rare. Those of seduction are not infrequent, but are generally to be met with in lower strata of society only. The amendment of 1925 has not materially reduced such cases. Only raising of the age is not expected to do much—though in itself it is desirable. The real remedy lies in meeting out the most vigorous punishment possible under the law to such offenders.

4. The amendment of 1925, was useful so far as it created the public opinion in raising the age of marriage, but not the least in protecting girl-wives against cohabitation. Neither pressure of public opinion nor any legislation can serve to regulate the relations of married couple and keep them off from consummation of marriage-rites. What would do is to make a legislation fixing the minimum age for marriage, on the lines of Sarda Bill as amended by the select committee.

5. Generally the age of attaining puberty is between 12 and 13 years. If it does differ at all in communities, castes or classes of society, the difference is negligible.

6. Cohabitation is rare before puberty, though not uncommon in cases (2) and (3). Such cases generally do not come to court.

7. The Jain religion does not enjoin anything regarding the age or time of consummation of marriage. There are neither any notions prevalent among the community attributable to religious doctrines. There is no consummation of marriage before puberty.

8. Yes, it generally coincides with the consummation of marriage. It is generally performed after a short time of attainment of puberty, and not before puberty.

9. This question can best be replied by medical man. Probably physical development sufficient to justify consummation does not take place until a year or two after the attainment of puberty.

10. Not before 16 years.

11. Such cases are sadly too many to quote.

12. Yes, to a very great extent.

13. No, if any, it is restricted to educated classes and even among them to the forward section.

14. The opinion is divided, but it is tending to be against, rather than for, it.

15. Yes, such difficulties are often met. We cannot suggest any remedies except that the birth-day registration entries be made more complete,

witnesses and doctors made more honest, the science made more exact and the judges more shrewd.

16. Raising of the age of consent does not materially reduce the difficulty or margin of error.

17. Yes, in case of marital offences, the punishment prescribed should simply be fine, or simple imprisonment for six months or both in case the age of the girl is below 12, and only fine in case it is above 12.

18. In case of marital offences summons should be issued in the first instance and not warrant; otherwise the present procedure may be kept.

19. In case of marital offences police should not have authority or power to investigate without a written order, to that effect, of a District or Presidency Magistrate made on a private complaint lodged with him, within a month of the alleged offence, and after a preliminary enquiry by himself or through a Magistrate of 1st class. It is the only safeguard we can suggest against improper prosecution or extortion.

20. No, in our opinion Legislation fixing the minimum age of marriage will be more effective and in consonance with public opinion.

21. We should never like to strengthen or embolden the penal law, so far as preventing the marital offences are concerned. It would only serve to create mischief. We will rather rely on the progress of social reform by means of education and social propaganda.

Written Statement of Pandit INDRA of Delhi.

1. Yes, there is dissatisfaction with state of the law as to the age of consent as contained in sections 375 and 376 of the I. P. C.

2. (a) Public opinion in my part of the country is gaining ground against the present law.

(b) Coming in view of abduction cases have opened the eyes of even persons of orthodox views.

(c) Large number of maternal and infantile mortality cases has induced the Hindus to advocate the change in the present social system.

3. Yes. Such cases are frequent. Amendment made in 1925 has not succeeded because sufficient publicity was not given to it. Amendment law should be rigorous enforced and public opinion should be educated in its support.

5. 13 or 14 is the age at which girls generally attain puberty. As far as I know there are no differences in this connection in different castes or communities.

6. (a—c) Yes.

Generally such cases do not come to the Court, because there is no agency competent for the purpose.

7. Yes. There is a large section among orthodox Hindus who believe that their religious books support early marriage and early consummation. Many texts from Smritis can be quoted, but there are also other texts in other Smritis equally or more authoritative that oppose the present custom. A few of such texts have been quoted in the Appendix No. 1 to my memorandum. So there is a divergence of views among the Smritis. Smritis are the products of the ages in which they were compiled. Whenever there is a divergence of views among Smritis we must appeal to Shruti (Vedic) for decision (See Appendix No. 2). As there is a clear divergence of view among Smritis about this matter, we must go to Shruti for ultimate sanction. Shruti clearly advocates marriage in youth (see Vedic text given in the Appendix No. 3). Age of youth in Vedic sense begins after the completion of 15th year (see authority quoted in Appendix No. 4). It is clear from Vedic texts that ultimate authority

on Hindu religion does not advocate early marriage or early consummation. The authorities that have been quoted in support of child marriage or early consummation are later and contradicted by authorities equally old or honoured.

8. Yes. But Gaona ceremony has no significance now. Because in some cases it is performed only a few days or a few months after the marriage.

9. No. A girl does not become physically fit for cohabitation before she has gained 16th year, i.e., three years after puberty.

10. Not before the age of sixteenth.

11. Yes. I know many such cases in which cohabitation before full physical development resulted in injury to the health of mother and child and even in their death.

12. Yes.

13. Yes. Particularly in educated classes, but generally among every section of society.

14. Educated women are earnestly endeavouring to raise the age of consummation of marriage for their children. They generally support the amendment proposed by Sir Hari Singh Gour.

15. Yes. Because by then the physical features of the girl would have undergone decided change.

16. Marital cases should be tried in camera, but extra-marital cases should be tried in open Court.

17. Legislation for fixing the minimum age of marriage would be more effective in protecting the society from present evils. Public opinion in my part of the country is in favour of fixing marriageable age.

18. We should rely on both. Without the aid of legal reform social reform will move very slowly and without a change of outlook on the part of the society, law will be fruitless.

चौश्च

(१) काममानरणाभिहेद रश्चि कन्यतुमत्यपि । न चैवैना प्रयच्छेत्तु गुणहीनाव कर्हिचित् ॥

मनु २।४५

(२) वीचि वचांशुदीचेत् कुमारं तुमती सती । कर्ष्यन्तु काजादेतत्ताद् विन्देत सङ्गमपतिम्

मनु २।६०

(३) जनवीरश्रवणायामप्राप्तः पञ्चविंशतिम् । यथावत् पुमान्गमं कुचिच्छः स निययति ॥

जाती वा न चिरजीवेद् जीवेद्वा दुर्बलेन्द्रियः । तत्कादत्यन्तास्त्रायां गर्भाधानं न कारयेत् ॥

संयुत १० पृ० । श्रुती० ४७, ४८

(४) पिताश्रतुत् खपुत्याश्व गण्येदादितः सुधी । दिनावधि रश्चि वजात् पालयेच्च रजस्वमान्

संस्कारकौशुम् ।

(५) वीचि वचांशुदीचेत् कन्या श्रतुमती सती । चतुर्थेत्य संप्राप्ते खव भतीरमर्जयेत् ॥

महामारत चतुर्वाक पर्व ४४ पृ०

(६) संप्राप्त कीर्तनां पश्यन् देवा दुहितरनुत्तमम् ।

(७) पञ्चविंशति तृती यने पुमान्नारी तु वीर्यम् । समत्वान्तवीर्यी तु जामीयान् कुशवी भिषक् ।
अथाथै पञ्चविंशतिवर्षाव वीर्यवर्षा पतीमावहेत्

(१) कुन्ती :—

तानु तेज स्त्रो कस्या उपयौवनशालिनो । व्यावृण्वन् पार्थिवाः केचिदतीवस्त्रीमुखं बुंताम् ।

(२) दमयन्ती :—

वैदर्भोऽनु तथा युक्ता युवती प्रेत्य वे तदा । मनसा चिन्तयामास कथं दयामिनां सुताम् ॥

स० भा० वनपर्व २६

(३) भीमासुद्धा :—

सम्प्राप्तवीर्या पश्यन् देवान्दुहितरनुताम् ।

स० भा० आदि० १७१ अ० ५

(१) विरीचे लग्नेष्यं स्यादसति अतुमानम् ।

जैमिनि

(२) श्रुतिश्रुतिविरीचेतु श्रुतिरूप गरीयसी ।

जायाव (श्रुति)

(३) चरं जिज्ञासमानानां प्रमाणं परमं श्रुतिः ।

मनुः

(४) अविरीचे सदाचार्यं आर्तं वैदिकयत्सदा । श्रुत्या सह विरीचे तु बाध्यते विषयं विना ॥

भविष्य पुराण

(१) युवाना पितरा पुनः सत्यमन्ता अजूनवः अमवी विष्टवक्रतः ।

ऋग्वेद १।२८।४ ।

(२) अपश्यं त्वा मनसा दीध्यानां स्वायातनं ज्ञत्वे साधमानाम् । सप मातुष्यायुवतिवर्भूजायाः
प्रजायस्य प्रजया पुत्रकामे ।

ऋग्वेद १०। १८३।२

(३) आधेनवी पुनयन्ता माश्रित्वीः सवदुंभ शत्रया अपदुर्धाः । नध्या नध्या युवतयो भवन्ति
महर्षेवानाशसुरत्वमिकम् ।

ऋग्वेद २।५५। १६

(४) युयुवतः सनयसा तदिहः समानमर्थं चितरिचता मिथः आदीमवी न ध्वयः सनयसा
वीर्यवृत्तमीनसमवससारधिः ।

ऋग्वेद १।२४।६

(५) यत्नी वा सेवयसा सकयंतः समाने धीमा निधुना समीकसा दिवा न मंत्रां पद्धिती युवाजनि
रु परममकरी मानुषा युगा ।

अ. १।१४४।

(१) श्रीकृष्णार्चिकं तावद् वाच्यं तावत्प्रवर्तते ।

(हारीतरीहिता शरीरस्थान)

(२) श्रीकृष्णार्चिकः आपचर्चिंशतेर्यौवनम् ।

समुत्त त्वस्थान अ. १५ ।

(३) श्रीकृष्णार्चिकेद बाल सारवसत सच्यते उदः स्वात् समतेर्यौवनम् ।

(शब्दसीममहानिधि)*

ASIATIC SOCIETY OF BENGAL

